



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

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

In Re: 9436047

Date: SEP. 30, 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.<sup>1</sup> 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 California Service Center Director denied the petition, concluding the proffered position is not a specialty occupation. On appeal, the Petitioner contends that the petition should be approved. 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. 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)(I) of the Act, 8 U.S.C. § 1184(i)(I), 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)(I) 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.<sup>2</sup> 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).

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<sup>1</sup> See Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

<sup>2</sup> 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").

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).

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).

## II. PROFFERED POSITION

The Petitioner provides accounting, finance, and human resource services to clients who are involved in creating and operating “startup” companies, and indicates that the Beneficiary will be employed as a “staff accountant.”<sup>3</sup> On the labor condition application (LCA)<sup>4</sup> submitted in support of the H-1B petition, the Petitioner designates the proffered position under the occupational category “Accountants and Auditors,” corresponding to the Standard Occupational Classification (SOC) code 13-2011, with a level I wage. The Petitioner provides various descriptions of the duties of the proffered position. For the sake of brevity, we will not quote all of the descriptions in full; however, we have closely reviewed and considered the duties. For instance, it initially provided a bulleted list of ten job tasks, as follows (verbatim):

1. Processing journal entries to G/L under the supervision of Associate Accountants/Controllers;
2. Assisting with reconciling bank and credit card accounts monthly by applying mathematical models and financial accounting principles;
3. Coding all transactions by name and account;

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<sup>3</sup> The Petitioner most recently employed the Beneficiary through post-completion optional practical training. 8 C.F.R. § 274a.12(c)(3)(i)(B); 8 C.F.R. 214.2(f)(10)(ii)(A)(3).

<sup>4</sup> The Petitioner is required to submit a certified LCA to U.S. Citizenship and Immigration Services (USCIS) to demonstrate that it will pay the Beneficiary 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 experience and qualifications who are performing the same services. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

4. Supporting the Associate Accountants/Controllers with managing accounts receivables and account payables;
5. Preparing financial reports for review by collecting, analyzing and summarizing account information and trends as requested;
6. Working with respective Controller/Manager in forecasting income and expenses;
7. Assisting with ensure compliance with federal, state, and local legal requirements by maintaining compliance documentation for each client.
8. Applying principles and practices of financial accounting to prepare financial reports monthly for each client review.
9. Working with respective team monthly to close books for each client; and,
10. Maintaining records of vendor relations and statuses.

In response to the Director's request for evidence (RFE), the Petitioner submits an updated job description for the proffered position which puts forth job duties with the percentage of time devoted to each job duty, as follows, in pertinent part:<sup>5</sup>

1. Employ analytical methods to create and manage both new and existing companies' financial affairs. (65%)

[The Beneficiary] prepares financial reports by collecting, analyzing and summarizing account information and trends as requested. The process of preparing any client's monthly financial report contains the review of their finances and reports and comments of her peers to ensure the work done is accurate. This also consists of the analysis of change in spending and revenue, which results in advising the client accordingly.

The creation of a new client's book consists of processing journal entries to the G/L, assistance of the reconciliation of bank and credit card accounts by applying mathematical models and financial accounting principles; and the coding of transactions by name and account.

2. Assisting the Chief Financial Officer (CFO) role provided to our clients in the preparation, review and delivery of the company's financial position. (15%)

As a member of the team on these projects, [the Beneficiary] provides and interpret financial information to the client and the CFO while sticking to deadlines set both internally and externally. Clients can also require assistance to ensure compliance with

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<sup>5</sup> We acknowledge that the Petitioner submitted additional information for the job duties, which, for the sake of brevity, have not been included herein. However, this material has been closely reviewed and considered, as with all evidence in the record. For instance, the Petitioner included a listing of 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].").

federal, state, and local legal requirements regarding taxes, annual reports or specific industry required reports or questionnaires. The employee also works along the supervisor with regards to forecasting income and expenses to ensure sound business decisions are made for the company.

3. Providing information to assist Investors and Corporate Officers. (10%)

[The Beneficiary] assists on financials produced to board members and those related. By reviewing and analyzing cashflow, budgets, and runway, it showcases profitability and provides stakeholders of their actual positions versus their budget in order to minimize financial risk.

4. Creation of External Infrastructural Spreadsheets. (10%)

[The Beneficiary] develops several analytic spreadsheets which are specific to a client's needs. To ensure that the reports are accurate, there is a need to create a particular procedure for complex clients. These contain several formulas and also auto populates certain information. The base of these creations can also be used by peers to leverage this reporting. These creations deal with but is not limited to, Revenue Payroll tracking and Venture Debt.

### III. ANALYSIS

For the reasons set out below, we determine that the proffered position does not qualify as a specialty occupation. Specifically, the record provides inconsistent and insufficient information regarding the proffered position, which in turn precludes us from understanding the position's substantive nature and determining whether the proffered position qualifies as a specialty occupation.<sup>6</sup> 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.

According to the Petitioner, "[o]ne of the main activities in which the Petitioner is engaged – and which the Beneficiary will work on – are accounting services for the Petitioner's clients." It describes the accounting services that it provides to clients, as follows:

Among the services offered by [the Petitioner's] boutique accountancy for startups are: Startup Bookkeeping; Part-Time CFO's; VC Due Diligence Preparation; Startup Tax Returns; Financial Modeling; R&D Credit Calculations; Venture Debt Expertise; Startup M&A Accounting (mergers and acquisitions); and 409A Valuations for Startups."

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<sup>6</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

The Petitioner emphasizes throughout the proceeding that the Beneficiary will liaise or interact with various personnel and clients, to include:

- Σ [A]ssist[ing] on financials produced to board members and those related;
- Σ [D]evelop[ing] several analytic spreadsheets which are specific to a client's needs;
- Σ [P]rovid[ing] and interpret[ing] financial information to the client and the CFO;
- Σ Assisting the Chief Financial Officer (CFO) role provided to our clients in the preparation, review and delivery of the company's financial position;
- Σ Assisting with reconciling bank and credit card accounts monthly by applying mathematical models and financial accounting principles;
- Σ Processing journal entries to G/L under the supervision of Associate Accountants/Controllers;
- Σ Supporting the Associate Accountants/Controllers with managing accounts receivables and account payables;
- Σ Working with respective Controller/Manager in forecasting income and expenses; and,
- Σ Working with respective team monthly to close books for each client.

The Petitioner provides narrative about the job duties of the position, but the evidence does not show the operational structure within this multi-faceted cohort in a manner that would establish the Beneficiary's claimed specialized, complex role as a staff accountant. Notably, the Director specifically requested evidence in her RFE that would delineate the Petitioner's staffing hierarchy, as well as an explanation of how the Beneficiary's specific job duties relate to the Petitioner's products and services. But, the Petitioner did not sufficiently address these aspects.<sup>7</sup> For instance, the Petitioner initially states that "it needs to employ a [s]taff [a]ccountant who will work closely with the [c]ontroller and [a]ccount manager to provide support to complete the different requested services of the client."<sup>8</sup> Though the Petitioner indicates that the Beneficiary will provide accounting services, and identifies services that it provides to clients which range from basic bookkeeping to VC due diligence preparation, the evidence in the record does not illustrate the specific categories of services that the Beneficiary will be engaged in within the context of the Petitioner's business operations.

The Petitioner has also submitted pages from its website which promote the services that it offers to startup companies, self-published internet blog articles, and other material such as press releases about the company on internet media such as yahoo.com. However, the Petitioner does not provide probative evidence of its organizational hierarchy, its business operations, or other evidence sufficient to illustrate the scope and nature of the Beneficiary's role within the Petitioner's business to establish the Beneficiary's asserted specialized, complex role as a staff accountant.<sup>9</sup>

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<sup>7</sup> "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).

<sup>8</sup> Oddly, the Petitioner goes on to state [ ] is an ideal candidate for the job." The Petitioner's reference to an individual other than the Beneficiary raises questions regarding whether the Petitioner's letter reflects the term and conditions of its employment offer to the Beneficiary, or to someone else. The Petitioner must resolve this inconsistency and ambiguity 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).

<sup>9</sup> Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010).

In determining the nature of a proffered position, the critical element is not the title of the position, but the duties of the underlying position. As part of our analysis, we review the duties of the proffered position to assess the duties and determine whether the described duties correspond to the duties and tasks listed in the Department of Labor's (DOL) Occupational Information Network (O\*NET) summary report for the occupation designated in the LCA, which in this case is "Accountants and Auditors."

According to DOL's Occupational Information Network (O\*NET), the core duties performed by accountants include "[a]nalyze financial information and prepare financial reports to determine or maintain record of assets, liabilities, profit and loss, tax liability, or other financial activities within an organization."<sup>10</sup> Notably, many of the proffered position's job duties appear to be in line with the general duties performed within the occupational category "Bookkeeping, Accounting, and Auditing Clerks" corresponding to (SOC) code 43-3031.00. For example, the proffered position's duties include tasks, such as "[p]rocessing journal entries to G/L under the supervision of Associate Accountants/Controllers," "[a]ssisting with reconciling bank and credit card accounts monthly," and "[c]oding all transactions by name and account." According to O\*NET,<sup>11</sup> the core duties performed within the "Bookkeeping, Accounting, and Auditing Clerks" occupational category include:

Compute, classify, and record numerical data to keep financial records complete. Perform any combination of routine calculating, posting, and verifying duties to obtain primary financial data for use in maintaining accounting records. May also check the accuracy of figures, calculations, and postings pertaining to business transactions recorded by other workers.

The Petitioner also described various "administrative duties" to be performed by the staff accountant in its job announcement that appear to be typical of general clerical work, such as:

- Σ Manages submitting, approval and tracking of maintenance projects;
- Σ Monitors billable hours between different clients;
- Σ Collecting mail and sending electronic copies to respective Controller/Account Manager; and,
- Σ Organizing documents online in Box.

These clerical tasks are not typical duties performed by "Accountants and Auditors" according to O\*NET, but are akin with duties performed by individuals employed in the "Office Clerks, General" occupational category. For instance, the Petitioner's position job task "[c]ollecting mail and sending electronic copies to respective [c]ontroller/[a]ccount [m]anager," closely corresponds with the "Office Clerks, General" job task "open, sort, and route incoming mail, answer correspondence, and prepare

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<sup>10</sup> See the O\*NET summary report for "Accountants," <https://www.onetonline.org/link/summary/13-2011.01> (last visited Sep. 25, 2020).

<sup>11</sup> See O\*NET summary report for "Bookkeeping, Accounting, and Auditing Clerks," <https://www.onetonline.org/link/summary/43-3031.00> (last visited Sep. 25, 2020). We also observe that the "Bookkeeping, Accounting, and Auditing Clerks" occupations are Job Zone Three occupations as described in O\*NET. The O\*NET material about the education level for Job Zone Three states "[m]ost occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree." See O\*NET Online Help, <https://www.onetonline.org/help/online/zones#zone3> (last visited Sep. 25, 2020). According to the O\*NET, these occupations do not require at least a bachelor's degree.

outgoing mail”<sup>12</sup> On appeal, the Petitioner acknowledges that its job announcement for the position includes both “[f]inancial duties and [a]dministrative duties, asserting that “the administrative duties obviously were not core to the position.” While the Petitioner does not describe how frequently the position’s administrative tasks would be performed, we presume tasks such as collecting and distributing mail, and monitoring billable hours for different clients would occur on a continual, on-going basis within the Petitioner’s consulting services operations.<sup>13</sup>

Collectively considering the evidence in the record, we determine that the proffered position includes non-qualifying bookkeeping and clerical duties inconsistent with those of a specialty-occupation caliber position. While no provision in the law for specialty occupations permits the performance of non-qualifying duties, we will view the performance of duties that are incidental<sup>14</sup> to the primary duties of the proffered position as acceptable when they are unpredictable, intermittent, and of a minor nature. Anything beyond such incidental duties, however, e.g., predictable, recurring, and substantive job responsibilities, must be specialty occupation duties or the proffered position as a whole cannot be approved as a specialty occupation. In this case, the Petitioner’s non-qualifying duties have not been shown to be incidental to the performance of the primary duties of the proffered position. Therefore, we are left to question the validity of the Petitioner’s assertions, and the remainder of the Beneficiary’s claimed duties. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. at 591-92. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. Id.

The Petitioner also submits an opinion letter authored by Professor B-. In his letter, the professor (1) briefly describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) quotes the duties proposed for the Beneficiary; and (3) reiterates the Petitioner’s statements in the record that these duties require at least a bachelor’s degree in accounting, or closely related fields. We carefully evaluated the professor’s assertions in support of the instant petition but, for the following reasons, determine his letter is not persuasive.

Significantly, the professor does not discuss the Petitioner’s business operations in a manner sufficient to establish the scope and complexity of the Beneficiary’s job duties therein. The professor states that he reviewed the Director’s RFE, the O\*NET and Department of Labor’s (DOL) Occupational Outlook Handbook (Handbook)<sup>15</sup> materials for “Accountants and Auditors,” the Petitioner’s initial letter of support, and the Beneficiary’s education credentials to arrive at his conclusions.

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<sup>12</sup> See O\*NET summary report for “Office Clerks, General” <https://www.onetonline.org/link/summary/43-9061.00> (last visited Sep. 25, 2020). We also observe that the “Office Clerks, General” occupations are Job Zone Two occupations as described in O\*NET. The O\*NET material about the education level for Job Zone Two states “[e]mployees in these occupations need anywhere from a few months to one year of working with experienced employees. A recognized apprenticeship program may be associated with these occupations.” See O\*NET Online Help, <https://www.onetonline.org/help/online/zones#zone2> (last visited Sep. 25, 2020). According to the O\*NET, these occupations also do not require at least a bachelor’s degree.

<sup>13</sup> Matter of Ho, 19 I&N Dec. at 591-92.

<sup>14</sup> The two definitions of “incidental” in Webster’s New College Dictionary are “1. Occurring or apt to occur as an unpredictable or minor concomitant . . . [and] 2. Of a minor, casual, or subordinate nature . . . .” Incidental, Webster’s New College Dictionary (3rd ed. 2008).

<sup>15</sup> References to the Handbook may be accessed at <http://www.bls.gov/ooh/>.

For instance, on appeal the Petitioner asserts that “[i]n describing [the Petitioner’s business], it goes without saying that [the professor] was well aware of [the Petitioner’s] expertise in the startup field in [REDACTED]”. However, the professor’s letter does not reflect that he conducted research about the Petitioner’s business beyond reviewing the aforementioned materials. Though the professor quotes verbatim the brief description of the Petitioner’s business activities proffered by the Petitioner in its initial letter, he does not demonstrate in-depth knowledge of its operations or how the duties of the position would actually be performed in the context of its business enterprise.

The professor quotes verbatim the initial duties of the proffered position, concluding “[the proffered position] has responsibilities and authorities commensurate with professional standing.” It may be that the professor was given materials by the Petitioner that delineate the Petitioner’s organizational hierarchy and business operations, (which we have not been afforded the opportunity to review), but the professor did not reference or explain the basis for his conclusion that the duties of proffered position involve “authorities commensurate with professional standing.” As previously discussed, the Petitioner has not supplemented the record with probative evidence of its organizational hierarchy, or other evidence sufficient to illustrate the scope and nature of the Beneficiary’s role to establish the Beneficiary’s claimed specialized, complex role as a staff accountant. Importantly, the professor also does not address how the non-qualifying duties included in the Petitioner’s position description that he quoted in his letter, such as “assisting with reconciling bank and credit card accounts” comports with the typical duties performed by “Accountants and Auditors.”<sup>16</sup>

In similar fashion, the professor opines “[i]t is also unlikely, given the advanced technological capacity required of this role, that a candidate without [b]achelor’s-level training in [a]ccounting or closely related fields would be successful as a candidate possessing this qualification.” Notably, the Petitioner’s job announcement does not specify any particular “advanced technological” skill requirements for the proffered position. For example, the Petitioner specifies that candidates for the position must have skills such as “knowledge of accounting theory, principles, and practices,” and “Microsoft Office proficiency.” As a result, the evidence in the record does not substantiate the professor’s assertion that the proffered position involves “advanced technological” responsibilities.<sup>17</sup>

For the reasons discussed, we find that the professor’s opinion letter lends little probative value to the matter here. In our discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (“[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to ‘fact’ but rather is admissible only if ‘it will assist the trier of fact to understand the evidence or to determine a fact in issue.’”). For the sake of brevity, we will not address other deficiencies within the professor’s analyses of the proffered position.

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<sup>16</sup> We incorporate our previous observations that many of the proffered position’s job duties appear to be in line with the general duties of the occupational category “Bookkeeping, Accounting, and Auditing Clerks” occupational category, or in some instances appear to be akin to the duties of the “Office Clerks, General” occupational category, not with the typical duties performed by “Accountants and Auditors.” *Matter of Ho*, 19 I&N Dec. at 591-92.

<sup>17</sup> *Id.*



Lastly, the Petitioner provides evidence that USCIS has approved a petition that it had previously filed on behalf of another employee. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); see also *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).

When considered collectively, we conclude that the inconsistencies, discrepancies, and lack of probative documentation in the record raise questions as to the substantive nature of the proffered position.<sup>18</sup> The Petitioner has not submitted consistent, corroborative evidence to adequately communicate (1) the nature of the actual work that the Beneficiary would perform, (2) the complexity, uniqueness, or specialization of the tasks, and (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. Accordingly, the Petitioner has not established that the proffered position is a specialty occupation.<sup>19</sup>

#### IV. 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.

ORDER: The appeal is dismissed.

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<sup>18</sup> Chawathe, 25 I&N Dec. at 376.

<sup>19</sup> 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.