U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D1

[redacted]

FILE: EAC 08 159 50370 Office: VERMONT SERVICE CENTER Date: DEC 08 2009

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § **103.5(a)(1)(i).**

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner states that it provides IT solutions, that it was established in 2004, employs 80 persons, and that it has a gross annual income of $10,000,000. It seeks to employ the beneficiary as a programmer analyst from October 1, 2008 to August 13, 2011. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On September 29, 2008, the director denied the petition determining, that the petitioner failed to establish that the beneficiary is qualified to perform the services in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act.

On appeal, counsel for the petitioner submits a brief and documentation in support of the appeal and contends that the director's decision is erroneous.

The record includes: (1) the Form I-129 and supporting documentation filed with United States Citizenship and Immigration Services (USCIS) on April 3, 2008; (2) the director's request for evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial decision; and, (5) the Form I-290B and counsel's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

When filing the Form I-129 petition, the petitioner averred in its March 31, 2008 letter appended to the petition that it "is a leading provider of information technology expertise in millennium, government services, outsourcing, offsite projects, test methodologies, and training" and that it was founded "to provide these services to an expanding base of potential clients." The petitioner noted that its "consultants are available to perform both staff augmentation and project outsourcing services for clients in a wide range of industries." The petitioner further noted that with its expansion efforts, it recognized the need for a programmer analyst. In that regard, the petitioner presented the qualifications of the beneficiary, indicating that the beneficiary had:

- Received a Bachelor's Degree of Electronics from the University of Bangalore, India in 1992; and
- Received a Diploma in Computer Applications from Aptech, India in 2001.

The petitioner provided copies of the beneficiary's diplomas; the beneficiary's diploma from the University of Bangalore certifies that the beneficiary was awarded a Bachelor's of Science degree, and the subjects studied were physics, mathematics, electronics. It is not a Bachelor's Degree in Electronics. The petitioner also noted that the beneficiary had "about 11+ year[s] of strong experience in the IT industry." The petitioner also provided an evaluation of the beneficiary's education credentials prepared by [redacted] on April 1, 2008. The evaluator determined that the beneficiary's Bachelor of Science degree from Bangalore University, India "is

the equivalent of a Bachelor of Science degree from an accredited university in the United States." [redacted] opined that the length of the academic sessions in India is longer than in the United States and thus, the beneficiary's completion of her degree in three years is the equivalent of an accelerated program of study in the United States that results in one of several types of degrees issued in three years of study rather than four years of study. The petitioner also included an offer letter issued to the beneficiary in October 2006 by IBM. The letter does not confirm that the beneficiary accepted the offer and was employed by IBM and the letter does not identify the beneficiary's actual daily work duties at IBM or identify her co-workers, supervisors, or subordinates or their educational credentials, if employed. The petitioner also attached a November 16, 2006 letter issued by [redacted] to the beneficiary accepting her resignation letter dated October 20, 2006. The letter does not identify the beneficiary's job title or actual daily duties while employed by Accenture and does not identify her co-workers, supervisors, or subordinates or their educational credentials. The petitioner further provided an undated letter issued by [redacted] certifying that the beneficiary worked for its organization from February 1999 to July 2005 as a junior programmer. The letter does not identify the beneficiary's actual daily duties for the organization and does not identify her co-workers, supervisors, or subordinates or their educational credentials. The petitioner also submitted an illegibly dated letter issued by [redacted] certifying that the beneficiary worked for the organization as a junior programmer from November 1992 to December 1998. The letter does not identify the beneficiary's actual daily duties for the organization and does not identify her co-workers, supervisors, or subordinates or their educational credentials.

In response to the director's RFE, the petitioner submitted an additional evaluation and a copy of the beneficiary's resume and contended that the beneficiary qualified for the specialty occupation of programmer analyst. The July 31, 2008 evaluation of the beneficiary's academic credentials and work experience was prepared by [redacted]. Dr. [redacted] opined that the beneficiary's bachelor's of science degree awarded by Bangalore University "is equivalent to 90 credits of academic studies toward a Bachelor's Degree in Science and also equivalent to 80 credits of academic studies toward a Bachelor's Degree in Computer Science from an accredited college or University in the United States of America." [redacted] noted that the beneficiary had 12 years and 5 months of work experience in the field of Information Technology and that "[d]uring this work experience she has acquired skills in Software design, development, testing, implementation, maintenance" and that "[s]uch work experience was gained while working with peers, supervisors, and/or subordinates who have a degree or its equivalent in the specialty occupation." [redacted] concluded that the beneficiary's combined education and work experience is the equivalent of a bachelor's degree in computer science from an accredited college or university in the United States. [redacted] also claimed to have authority to grant college-level credit for training and/or work experience.

The petitioner included the same letters from potential or actual employers as initially provided. The petitioner also included the beneficiary's resume listing her duties for each of the companies and noting that she was employed by IBM from November 2006 to present.

As observed above, the director determined that the record did not establish that the beneficiary is qualified to perform services in a specialty occupation. The director referenced the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE), an authoritative web-based resource for educational evaluations and noted that a review of the EDGE database revealed that a bachelor's degree in science from Bangalore University in India is comparable to three years of university study in the United States. The director did not accept the April 1, 2008 evaluation of the beneficiary's educational credentials prepared by [redacted] as it was based on the length of the academic year in India. The director further discounted the July 31, 2008 evaluation submitted by [redacted] The director noted that [redacted] claimed to have authority to grant college-level credit for training and/or work experience, but that the record did not include documentary evidence to substantiate his claim. The director also noted [redacted] opinion that the beneficiary's work experience was gained while working with peers, supervisors, and/or subordinates who have a degree or its equivalent in the specialty occupation; but found that this information was not corroborated in the letters submitted by the beneficiary's previous employers. The director concluded that the petitioner had not established that the beneficiary was qualified to perform the services of a specialty occupation.

On appeal, counsel for the petitioner asserts that [redacted] credentials establish that he is qualified to perform evaluations and provides more information regarding [redacted] professional positions. Counsel also asserts that the beneficiary's resume details the duties of her previously held positions and re-submits the beneficiary's resume. Counsel also submits an October 23, 2008 letter prepared by [redacted] that indicates the beneficiary, as a junior programmer, was involved in the computerization of its payroll process and equipment rental processing of applications, writing computer programs to design data entry screens and to generate various reports using different computer databases and languages. The petitioner also submitted a September 12, 2008 letter prepared by [redacted] indicating that the beneficiary as a programmer analyst was involved in the design and development of the company's sales order processing and inventory management software applications. The letter also indicated that the beneficiary coded numerous programs using programming languages and databases and developed front end data entry screens and business rules server for the sales order processing application as well as the monthly inventory cycle count modules.

The issue in this matter is whether the petitioner has established that the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C) (i) experience in the specialty equivalent to the completion of such degree, and

(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

(1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record does not evidence that the beneficiary holds a United States baccalaureate or higher degree in any field, as required to establish that the beneficiary is qualified pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*). Neither does the record provide evidence establishing that the beneficiary's bachelor's of science degree from Bangalore University in India is equivalent to a United States baccalaureate or higher degree as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*). As the director noted, USCIS relies on the objective AACRAO Electronic Database for Global Education (EDGE), a web-based resource for educational evaluations. The AAO finds that the EDGE database provides an objective evaluation of the degrees offered in numerous countries, including that of India. The AAO notes that the EDGE database reports that a bachelor's of science degree in India is awarded upon completion of two to three years of tertiary study beyond the higher secondary certificate (high school) or its equivalent. The AAO does not find that the opinions of either [redacted] or [redacted] sufficient to overcome the information presented by EDGE, an objective and independent source regarding foreign education as it relates to university-level education in the United States. Moreover, the AAO observes that [redacted] and [redacted] present different

opinions regarding the beneficiary's foreign education. [redacted] opines that the beneficiary's foreign education is the equivalent of a general bachelor's of science degree in the United States and [redacted] opines that the beneficiary's foreign education is equivalent to 90 credits (or three years of university-level study) toward a bachelor's of science degree in the United States. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this matter, [redacted] opinion regarding the beneficiary's foreign education based upon her transcripts is comparable to the conclusion reached by AACRAO. As the beneficiary's transcripts show that the beneficiary completed three years of foreign education, [redacted] opinion that her foreign education is equivalent to 90 credits or three years toward a bachelor's degree from an accredited college or university in the United States will be accepted.

The petitioner has not provided evidence that a license or other credential is necessary to perform the duties of the occupation; thus the petitioner may not establish the beneficiary's qualifications under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*3*).

Thus, the beneficiary's qualifications in this matter must be reviewed under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*), whether the beneficiary's education coupled with her work experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation and that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for H-1B nonimmigrant visa based on:

> *(1)* An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
>
> *(2)* The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
>
> *(3)* An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
>
> *(4)* Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

> *(5)* A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

When evaluating a beneficiary's qualifications under the fifth criterion, USCIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities[1] in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO finds that the evaluation prepared by [redacted] does not include documentary evidence that [redacted] is an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). The AAO acknowledges [redacted] claim that he has such authority; however, his claim is not substantiated by independent evidence, such as a letter from a dean or provost verifying his authority. In addition, the record does not contain substantiating evidence that the universities that employ [redacted] have programs for granting college-level credit based on an individual's training or work experience in the specialty. Thus, [redacted] evaluation of the beneficiary's work experience with her prior employers has no probative value. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, as the director noted, the beneficiary's employers' letters that were presented do not include information regarding the circumstances of the beneficiary's work experience, including evidence of the beneficiary's work with her peers, supervisors, or subordinates. Thus, [redacted]

[1] *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinion, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(i)(C)(ii).

statement regarding the beneficiary's work experience with her peers, supervisors, and/or subordinates is not substantiated by evidence in the record. The petitioner has not established that the beneficiary is eligible to perform the services of a specialty occupation pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). The record does not contain any evidence that the beneficiary is qualified for an H-1B nonimmigrant visa based on the requirements at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(*2*), (*3*), or (*4*).

Turning to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), the AAO has reviewed the evidence in the record to determine whether the beneficiary has acquired the equivalent of a degree through a combination of education, specialized training, and/or work experience in areas related to the specialty. The AAO has already noted the deficiencies in the record regarding the beneficiary's educational credentials and finds, at most, that the beneficiary has completed coursework of three years of university-level education that may be counted toward a general bachelor's of science degree from an accredited university or college in the United States. The AAO has also reviewed the letters submitted from the beneficiary's prior employers. The letters provide a list of broadly-stated responsibilities and are insufficient to establish that the beneficiary performed duties that correspond to coursework involving theoretical concepts and required practical application of a body of specialized knowledge at a university level. In addition, as generally referenced above, the employers' letters fail to discuss how the beneficiary's work experience with her peers, supervisors, or subordinates comprised an atmosphere conducive to obtaining knowledge that consequentially progressed to the equivalent of a bachelor's degree or its equivalent in the field. The letters do not describe the beneficiary's supervisory or managerial responsibilities in detail or provide statements regarding the credentials of the beneficiary's peers, supervisors, or subordinates. Neither do the letters reveal how the beneficiary gained greater experience or responsibility as she progressed through her tenure with each organization and subsequent employers.

The record lacks evidence that demonstrates that the beneficiary has attained the equivalent of a bachelor's degree in computer science, information technology, electronics and math or a related field through a combination of her education, specialized training, and work experience. Neither has the petitioner documented recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. The petitioner has not established that the beneficiary has the requisite qualifications to perform the duties of a specialty occupation. For this reason, the petition will not be approved.

Beyond the decision of the director, the petitioner has not established that the proffered position is a specialty occupation. The petitioner initially provided a general overview of the position's duties as follows:

- Design, analyze and develop programs for both existing and new systems to meet end-user needs.
- Implement and support hardware and software applications and related services.
- Create commercial software package.
- Identify new software for upgrades and conversions.

The petitioner also provided a document labeled "Itinerary" indicating that it would be the beneficiary's employer and that the beneficiary would work in the same city as the petitioner's offices for 36 months beginning October 1, 2008. The petitioner repeated the above description as the duties the beneficiary would be expected to perform. The petitioner acknowledges in its March 31, 2008 letter appended to the petition that it "is a leading provider of information technology expertise in millennium, government services, outsourcing, offsite projects, test methodologies, and training" and that it was founded "to provide these services to an expanding base of potential clients" and that its "consultants are available to perform both staff augmentation and project outsourcing services for clients in a wide range of industries." Thus, the record demonstrates that the petitioner is an employment contractor.

For purposes of the H-1B adjudication, the issue of *bona fide* employment is viewed within the context of whether the petitioner has offered the beneficiary a position that is determined to be a specialty occupation.

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

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States."

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

(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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the

proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category. To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, to determine whether the position qualifies as a specialty occupation. *Defensor v. Meissner*, 201 F. 3d 384.

The petitioner has submitted a broad statement of the beneficiary's proposed duties. Although the petitioner provided a document labeled "Itinerary," the petitioner has not provided evidence of any projects the beneficiary would work on in-house and has not provided any contracts with third party entities describing any duties the beneficiary would perform for those third parties. Without a comprehensive description of the beneficiary's actual duties from the ultimate end user of the beneficiary's services, whether the end-user is the petitioner or a third party, coupled with evidence supporting such a position exists for the entire requested employment period, the petitioner has not established that the proffered position is a specialty occupation. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

The only information in the record regarding the beneficiary's actual duties is the outline initially provided. This outline is insufficient to establish that the beneficiary's actual duties as they relate to any proposed projects comprise the duties of a specialty occupation. The description is broadly stated and vague regarding details of the level of support and actual actions that the beneficiary will be expected to perform. The AAO observes that the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) reports that a bachelor's degree commonly is required for computer programming jobs, but also recognizes that a two-year degree or certificate may be adequate for some positions. The *Handbook* also notes that "[e]mployers favor applicants who already have relevant programming skills and experience" and that "[s]killed workers who keep up to date with the latest technology usually have good opportunities for advancement." The petitioner has not provided sufficient evidence to establish that the general outline of duties set out in its description would require a degree beyond that of an associate degree and/or certifications in a particular programming language. The description shows, at most, that the beneficiary should have a basic understanding of particular computer programs, an understanding that could be attained with a lower-level degree or certifications in the programs.

The record is without the underlying evidence of the actual work to be performed or other evidence to support the petitioner's claim that the proffered position is a specialty occupation. As the record in this matter does not include a comprehensive description of the beneficiary's actual duties and the project(s) the beneficiary will work on for the duration of the requested employment period, the petition must be denied. To establish that a specific position in the computer field is a specialty occupation, the petitioner must provide evidence of the nature of the employing organization, the

particular projects planned, a comprehensive description of the beneficiary's duties from the ultimate end user of the beneficiary's services, and evidence that the duties described require the theoretical and practical application of a body of highly specialized knowledge attained through a baccalaureate program in a specific discipline. In this matter, the petitioner has failed to provide such evidence. Without evidence of contracts, work orders, in-house projects, or statements of work describing the specific duties the end use company requires the beneficiary to perform, USCIS is unable to discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through a baccalaureate program. Without a meaningful job description, the petitioner may not establish any of the alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In support of this analysis, USCIS routinely cites *Defensor v. Meissner,* 201 F.3d 384 (5th Cir. 2000), in which an examination of the ultimate employment of the beneficiary was deemed necessary to determine whether the position constitutes a specialty occupation. The petitioner in *Defensor*, Vintage Health Resources (Vintage), was a medical contract service agency that brought foreign nurses into the United States and located jobs for them at hospitals as registered nurses. The court in *Defensor* found that Vintage had "token degree requirements," to "mask the fact that nursing in general is not a specialty occupation." *Id.* at 387.

The court in *Defensor* held that for the purpose of determining whether a proffered position is a specialty occupation, the petitioner acting as an employment contractor is merely a "token employer," while the entity for which the services are to be performed is the "more relevant employer." *Id* at 388. The *Defensor* court recognized that evidence of the client companies' job requirements is critical where the work is to be performed for entities other than the petitioner. The *Defensor* court held that the legacy 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.*

In this matter, the record demonstrates that the petitioner acts as an employment contractor. The petitioner has not provided substantive evidence of in-house projects to which the beneficiary would be assigned or the work the beneficiary would perform in-house. The petitioner's failure to provide evidence of in-house work, work orders or employment contracts between the petitioner and its clients and its clients' clients throughout the requested employment period renders it impossible to conclude for whom the beneficiary will ultimately provide services, and exactly what those services would entail. The AAO, therefore, is unable to analyze whether the beneficiary's duties at each worksite would require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation. Accordingly, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(ii). The petition will be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.