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

U.S. Citizenship and Immigration Services

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FILE: WAC 08 144 51781 Office: CALIFORNIA SERVICE CENTER Date: SEP 16 2009

IN RE: Petitioner:
Beneficiary: [redacted]

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:

SELF-REPRESENTED

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 engages in software consulting, training and development, that it was established in 1998, employs 210 persons, and has an estimated gross annual income of $35,000,000 and an estimated net annual income of $1,200,000. It seeks to employ the beneficiary as a computer systems analyst from October 1, 2008 to September 28, 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 October 20, 2008, the director denied the petition, determining that the petitioner failed to establish that: (1) it had a *bona fide* specialty occupation position to offer the beneficiary; and (2) it is in compliance with the terms and conditions of employment.

On appeal, the petitioner submits a statement and documentation in support of the Form-I-290B, 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 14, 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 the petitioner's brief and documentation submitted 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 29, 2008 letter appended to the petition that it is a software development and consulting company that "provides consulting and business solutions to a large number of clients from various industries." It further stated that "it is a certified partner to SAP", that it is "implementing industry specific solutions for various industries," and that it had "entered into a licensing agreement with University of Kansas for on-line technology called FRAANK that analyzes the financial reports of publicly traded companies." The petitioner indicated that it planned "to come up with its own software package for the financial sector" and its services to "[d]evelop Web applications and integrate with SAP for financial sector in association with Kansas University." The petitioner also noted that it would assign five .Net consultants, five web consultants, five Java consultants, two BASIS administration consultants, two security administration consultants, five business analysts, five ABAP consultants, five SAP functional consultants, five testers, three network administrators and three data migration consultants, to the project to work with the petitioner and Kansas University management to identify the appropriate solutions.

Regarding the beneficiary, the petitioner stated that he would be employed as a computer systems analyst with an annual salary of $54,000. In the petitioner's March 29, 2008 letter, the petitioner indicated that it needed a computer systems analyst and wished to employ the beneficiary in this position. The petitioner indicated that in this position the beneficiary would be responsible for:

- Gathering the requirements, identifying systems and business requirements for new/revised automated systems,
- Developing specifications and conduct[ing] internal and external specification reviews for functionality,
- Developing and writ[ing] test plans specifications to incorporate all design features for new products, enhancements to existing systems due to legal changes or system upgrades,
- Researching system problems, documents and communicating findings,
- Evaluating and mak[ing] recommendations from a business perspective, the feasibility of designing/revising new or existing computer systems,
- Facilitating business meetings to develop or revise business workflows and documents,
- Articulate issues, plans, risks, etc. in a way that facilitates timely decision making,
- Managing requirements gathering sessions,
- Soliciting requirements, documenting and prioritizing requirements,
- Provid[ing] linkage to Business Units, Development, Operations, Architecture and Technical Support groups,
- Documenting various types of project artifacts like Scope documents, Business Rules, Use Cases, Process Flow Diagrams, Content Analysis, Page flow and navigation requirements, Technical Specification, Performance Requirements Vendor Contracts, And User Guides[,]
- Understanding of usability modeling, web design using wireframes and comps, content management and delivery, workflow management, taxonomy management, website content management governance,
- Participating in developing unit objectives to align with overall business plan.

The petitioner indicated that the beneficiary would use his skill sets in analyzing and implementing the gathered requirements. The petitioner submitted a March 28, 2008 offer of employment addressed to the beneficiary indicating that his annual salary would be $54,000, that he would receive health benefits, and payment of legal fees to obtain H-1B classification. The initial record also included a Form ETA 9035E, Labor Condition Application, (LCA) certified by the Department of Labor on March 29, 2008 for a computer systems analyst position in Arlington Heights, Illinois showing the prevailing annual wage as $53,165 and the annual rate of pay for the intended beneficiary as $54,000.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on June 11, 2008. In the request, among other things, the director: asked the petitioner to clarify the petitioner's employer-employee relationship with the beneficiary; requested evidence that a specialty occupation exists for the beneficiary; requested copies of signed contracts between the petitioner and the beneficiary; requested a complete itinerary of services or engagements that specifies the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues, or locations where the services will be performed for the period of time requested; requested copies of signed contractual agreements, statements of work, work orders, service agreements, and letters between the petitioner

and the authorized officials of the ultimate end-client companies where the work will actually be performed that specifically lists the beneficiary by name on the contracts and provides a detailed description of the duties the beneficiary will perform; requested the status of the currently employed H-1B and L-1 employees; requested information regarding the petitioner's premises and its office floor plan; requested a clarification of where the beneficiary would actually work; and requested copies of its federal tax returns and its state and federal quarterly wage reports.

In a response dated June 26, 2008, the petitioner addressed the director's queries. To clarify the employer-employee relationship with the beneficiary, the petitioner provided a copy of an agreement dated March 27, 2008 confirming the beneficiary's employment that was signed by both the petitioner and the beneficiary. Although this document was signed and dated by the beneficiary prior to the date the petition was filed, the petitioner did not initially submit this document. The AAO questions the legitimacy of a material document dated at the time the petition was filed but submitted only in response to the director's RFE. The AAO observes that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Nevertheless, the AAO notes that the employment agreement provided only an overview of the beneficiary's proposed duties as a systems analyst indicating the beneficiary's duties would include: "Systems Analysis, Evaluation, Design, Implementation and System/Functional testing etc." and "other tasks suitable for Systems Analyst and which [the petitioner] may assign you." The petitioner also noted that it would provide the beneficiary "with task-specific instructions for each task assigned to you."

The petitioner also provided a contractual agreement and summary of proposed licensing terms between the petitioner and the Kansas University for the project "FRAANK," involving on-line technology that accesses and analyzes the financial reports of publicly traded companies. The petitioner indicated that it "is currently building a portfolio of tools around the FRAANK technology and 'bundle up' with different software products used by the industry" and "intends to create a live stream service to all its present customers in their specific industries." The petitioner provided a history of the FRANNK technology and reiterated its plans "to come up with its own software package for the financial sector" and its services to "[d]evelop Web applications and integrate with SAP for [the] financial sector in association with Kansas University," and that it would assign individuals in various categories as noted in its initial letter of support. In response to the director's RFE, the petitioner added that it would also provide the equipment, workspace, and supplies.

The petitioner further provided a June 26, 2008 letter showing the itinerary for the engagement of the beneficiary's services. The letter indicated that the beneficiary would work at the petitioner's office at [redacted] Arlington Heights, Illinois beginning October 1, 2008 to September 28, 2011 and repeated the initially described description for the beneficiary's proposed duties. The petitioner also noted that the beneficiary would be employed on the FRAANK project as a computer systems analyst. The petitioner indicated that the FRANNK project "clearly establishes the need for Specialty Positions such as Programmer Analyst, Computer Systems Analysts, Network Administrators etc., and that the specialty Occupation exists in the project." The petitioner noted further that the technical environment of the project included "technologies such as

SAP ABAP, HR, FICO, BASIS, Security, ASP.NET, Web Technology tools, Java technologies, and Date bases, Oracle, Operating Systems Windows and NT."

The record includes: a table listing the employment status of the petitioner's H-1B and L-1 employees; the petitioner's payroll summary and Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements for 2006 and 2007; state quarterly wage reports for the previous eight fiscal quarters and IRS Forms 941 for 2006, 2007 and the first quarter of 2008; IRS Forms 1120, U.S. Corporate Income Tax Return, for 2005 and 2006 and a copy of an application for an extension to file the petitioner's 2007 Form 1120; and website information regarding the petitioner.

The petitioner also provided a copy of its January 25, 2005 lease for at [redacted], Arlington Heights, Illinois. The petitioner noted that it operated out of Suite 55 while its "sister" company operated out of Suite 54, and that each company had separate employees and separate clientele, but shared the same work labs and training facilities. The lease agreement shows the leased premises, Suites 54 and 55, include 5,682 square feet. The petitioner indicated that it was still waiting for its new lease agreement that showed that it only occupied and operated from Suite 55 of the leased premises. The petitioner also noted that "due to clients' requirement and confidential nature of work involved, it becomes an absolute necessity sometimes that the petitioner's employees work from the client's site too for the implementation of the projects." The petitioner stated that several of its employees work from the client's site, but that "overall control, supervision and direction of all the petitioner's employees is centered at petitioner's business premises."

On October 20, 2008, the director denied the petition. The director observed that a petitioner must establish that a specialty occupation position actually exists, that it is not permissible to state that it will employ an individual to perform duties that are characteristic of those found in a particular specialty occupation. Upon review of the evidence submitted in response to the RFE, the director determined that the petitioner filed an extraordinarily high number of petitions in relation to the number of employees it claimed on the petitioner and that few of the employees who were granted H-1B nonimmigrant status are actually still working for the petitioner pursuant to the originally stated terms of employment. The director identified 11 employees whose Forms W-2 for 2007 showed that the employees were not paid the wage proffered in the petition relating them.

The director also observed that the petitioner claimed to employ 210 employees and that its sister company claimed to employ 107 (or maybe more) employees. The director questioned whether the petitioner and its sister company had sufficient physical premises for their claimed number of employees to work on site. The director noted the petitioner's unusual pattern of H-1B petition filings and conflicting statements regarding wages paid to beneficiaries and determined that the evidence reviewed raised legitimate concerns regarding the petitioner's compliance with the terms and conditions of employment as shown on the Form I-129.

The director determined that the volume of H-1B petitions filed and the low number of employees who were granted H-1B status that are still working for the petitioner established that the petitioner did not have the intent to employ the beneficiary in the job described. The director determined that

the record lacked a reliable evidentiary basis to determine that the petitioner's proffer of employment is authentic and thus the petitioner had failed to demonstrate a credible offer of employment for an H-1B classification.

On appeal, the petitioner explains that it files a high number of H-1B petitions because of the high competition among companies in the IT sector looking for qualified personnel and that for this reason many of its employees transfer to other companies. The petitioner asserts that it fully compensates all its employees for their services as obligated under the regulations. The petitioner states that any discrepancy between the proffered wage and wages actually paid often is the result of employees utilizing unpaid personal leaves. The petitioner provides the reasons for the discrepancies in the proffered and actual wages for 10 of the 11 beneficiaries referenced by the director. The petitioner states that three of the beneficiaries were employed under the OPT program prior to their H-1B classification; that three employees were on medical leave for extended periods of time; that one employee took an extended vacation; and that three employees were on extended leave for personal reasons. The petitioner does not provide a reason for failing to pay the proffered wage of one of the individuals referenced by the director.

The petitioner contends that although it shared office space with its sister company, it did not operate a "virtual" office but occupied actual premises. The petitioner submitted a copy of a lease dated July 30, 2008, signed September 3, 2008, for a start date of September 1, 2008 and an end date of March 31, 2009. The leased premises included Suites 55 and 58 containing approximately 4,583 square feet. The petitioner's floor plan included only Suite 55.

The petitioner further asserts that it provided a detailed description of an in-house project, FRAANK, to which the beneficiary would be assigned to work as a computer system analyst.

Upon review of the evidence of record, the AAO concurs with the director's determination that the petitioner's offer of employment was not *bona fide* and thus was not an offer of a specialty occupation position. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). In this matter, the petitioner has failed to establish the proffered position is a specialty occupation.

It should be noted that 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. Therefore, the AAO will specifically review whether the petitioner has provided sufficient evidence to establish that the services to be performed by the beneficiary are those of 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 regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Moreover, the regulation at 8 C.F.R. § 214.2(h)(4)(iv)(A)*(1)* specifically lists contracts as one of the types of evidence that may be required to establish that the services to be performed by the beneficiary will be in a specialty occupation.

In this matter, the petitioner provides an overview of the general the tasks that it expects the beneficiary to perform. Although the petitioner references the FRAANK project, the tasks described are not detailed and related to the specific project. The AAO notes in addition that the petitioner does not identify a "computer systems analyst" as one of the positions it will assign to the FRAANK project.[1] The AAO finds that it is the generality of the petitioner's descriptions that precludes a

[1] The petitioner noted that it would assign five .Net consultants, five web consultants, five Java

determination that the proffered position is a specialty occupation. The AAO acknowledges that the FRANNK project may require individuals with a baccalaureate or higher degree in a specific discipline; the petitioner, however, in this instance has not provided the detailed information that demonstrates the position offered to the beneficiary is a specialty occupation position.

Upon review of the record, the AAO acknowledges that the petitioner entered into a licensing agreement with the University of Kansas in 2007 and that the petitioner agreed to commercialize the software also in 2007. The petitioner also set a tentative start date to begin to "develop and commercialize the software application FRANNK" as January 1, 2008; however, the record does not include further information regarding the project. In this matter, the AAO does not find sufficient evidence that the petitioner's proposed in-house project began, continued, and was in process when the petitioner offered a position to the beneficiary. 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)). The record is insufficient to establish that the petitioner had a specialty occupation available with a comprehensive description of the actual duties comprising the specialty occupation position for the beneficiary when the petition was filed.

The AAO finds that the documentation in the record, even when reviewed in totality, does not provide sufficient details regarding the specifics of the job offered. The AAO is unable to discern from the record the nature of the beneficiary's purported duties for the petitioner. The record does not include specific detail regarding specific tasks describing the beneficiary's duties in relation to the FRAANK project. 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 beneficiary will be employed in a specialty occupation.

The AAO reiterates that the record in this matter does not include a comprehensive description of the beneficiary's actual duties in relation to a project(s) he will work on for the duration of the requested employment period. 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, 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 this information, USCIS is unable to discern the nature of the actual position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through a baccalaureate program. The AAO emphasizes that it is the wide range of knowledge, skills, and education that may or may not be required for a particular computer-related position that necessitates the comprehensive description of the duties the

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consultants, two BASIS administration consultants, two security administration consultants, five business analysts, five ABAP consultants, five SAP functional consultants, five testers, three network administrators and three data migration consultants. Although one or more of these positions may include the duties of the more broadly titled computer systems analyst, the record lacks the details to so establish.

beneficiary will be expected to perform. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165. 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).

The AAO will now briefly discuss the director's decision regarding the petitioner's noncompliance with the terms and conditions of employment.

The AAO notes the petitioner's explanation for filing a high number of H-1B petitions is due to the intense competition among companies in the IT sector looking for qualified personnel. However, regardless of the high competition among IT companies or IT employment contractors in particular, the petitioner must establish that it has a specific specialty occupation position available for the beneficiary and is not seeking to employ the beneficiary for speculative employment. In this regard, the AAO finds that the director's questioning of the petitioner's compliance with its purported offers of employment to other beneficiaries at their specific wage as set out in the LCA and petition pertinent to each beneficiary, is justified.

The AAO has reviewed the voluminous documentation pertaining to the petitioner's H-1B beneficiaries that was submitted into the record. The AAO acknowledges that absent full details regarding the circumstances surrounding the employment of each H-1B employee and the petitioner's complete personnel records regarding each of these beneficiaries, the record does not include sufficient evidence to determine whether the petitioner compensated each beneficiary as shown on the pertinent LCA. That being said, the AAO agrees that the number of petitions filed by this petitioner and the record of intermittent compensation raises concerns regarding the legitimacy of the H-1B petitions the petitioner files. The AAO acknowledges the petitioner's general explanations regarding its perceived failure to comply with the terms and conditions of employment expressed to USCIS as well as the petitioner's explanations regarding 10 of the 11 specific employees referenced by the director. The AAO finds, however, that the petitioner's specific explanations regarding the 10 employees are not substantiated with independent documentation including information from statements, passports, and medical documentation of each pertinent beneficiary. 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. at 165. Although the record in this matter is insufficient to determine that the petitioner failed to comply with the terms and conditions of employment of other beneficiaries in other petitions, the AAO finds that the number of discrepancies in wages and the lack of documentation supporting the petitioner's explanations suggests that the petitioner did not have work available for the beneficiaries for the requested employment period.[2]

[2] While the Department of Labor regulations at 20 C.F.R. § 655.731(c)(7)(ii) may permit the non-payment of wages by an H-1B employer "due to conditions unrelated to employment which take the nonimmigrant away from his/her duties at his/her voluntary request and convenience," this has no bearing on a Department of Homeland Security (DHS) determination regarding an alien's maintenance of status in the United States and a petitioner's compliance with DHS H-1B program requirements. In general, except in situations in which the Family and Medical Leave Act (29

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

U.S.C. § 2601 et seq.) or the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) may apply, DHS generally requires that the failure to carry on the specific activities for which the H-1B status was obtained constitutes a failure to maintain status and renders the alien immediately deportable and the employer in non-compliance with the H-1B program requirements.