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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

b2



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 01 2010

IN RE: Petitioner: [REDACTED]
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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for 
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a software integration and development company. It seeks to employ the beneficiary as a programmer analyst and to classify him 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).

The director denied the petition on the following grounds: (1) the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation; (2) the petitioner failed to submit an itinerary; and (3) the petitioner failed to establish that the U.S. Department of Labor's Form ETA 9035E Labor Condition Application (LCA) corresponds to the petition.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B with the petitioner's letter and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In the petition submitted on October 14, 2008, the petitioner stated it has 250 employees and a gross annual income of \$23 million. The petitioner indicated that it wished to employ the beneficiary as a programmer analyst from October 29, 2008 to October 5, 2011 at an annual salary of \$50,000.

The support letter states that the person in the proffered position will work:

[o]n the development of our Software Products in TTL where he is going to be a part of a mission critical product to be developed in Web Based environment and provide application architecture, design and application framework development. He will be mainly working on our Shipping and Profit Optimization products development for Airlines. The existing clients for these products include Midwest Airlines, American Airlines, Color Line, Swedish Rail, Martin air, P&O Ferries, MISC Shipping, Stena shipping lines, Win airlines, Aloha Airlines, Britney ferries, star shipping etc.

The petitioner states that the proffered position requires someone with "[a]dvanced Technical programming, mathematical and analytical background skill." The petitioner did not state in the support letter the minimum degree requirements, if any, for the proffered position.

The Form I-129 states that the beneficiary will work at the petitioner's offices in Carrollton, Texas. The submitted Labor Condition Application (LCA) was filed for a programmer analyst to work in Carrollton, TX from October 6, 2008 to October 5, 2011. The LCA lists a prevailing wage of \$47,611 for Carrollton, TX.

The petitioner submitted the beneficiary's credentials, indicating that he has a foreign degree and experience. However, no credential evaluation was submitted.

On March 10, 2009, the director issued an RFE. The petitioner was instructed to submit a more detailed job description as well as a:

detailed itinerary of the work sites the beneficiary is to be assigned to, to include specific dates, locations, and clients that the beneficiary will be servicing. Also provide a copy of the contract with the end client or a letter from the end client that addresses the specific duties that will be performed by the beneficiary. The end client contract or letter must provide the address and telephone number of the business where a contact can be reached.

The RFE also stated:

[i]f the beneficiary will work on an in-house project, submit evidence describing the in-house project(s), the length of time the beneficiary is expected to work on the project, team members assigned to the project, their titles and duties, and invoices showing the sale of the product to your customers. Explain the qualifications necessary for the project and how the beneficiary is qualified for the project. . . .

The petitioner responded as follows: “[The petitioner] is seeking a qualified Programmer Analyst who, under the supervision of a Project Manager, will test, implement and document various software applications. The ideal candidate will be well-versed in developing Web applications using Java related technologies.” The petitioner described the duties as follows:

- Developing the technical design and general framework, proof of concept prototypes and working on Requirement analysis, and participating in Data Modeling, analysis and design;
- Designing various applications using J2EE design patterns;
- Developing, analyzing, designing and maintaining the Intranet/Internet applications;
- Developing J2EE applications on Java IDEs;
- Designing application architecture based on Struts, Spring, Hibernate;
- Writing Hibernate and SQL queries, Stored Procedures, Triggers and Views in Oracle and UNIX Shell Scripts;
- Developing test case scenarios; and
- Deploying and testing applications.

The petitioner also stated that the proffered position requires at least a bachelor’s degree in computer science, information technology, engineering or a related field plus 2-5 years of experience developing computer programs or applications.

Additionally, the petitioner stated that it has developed its own product range for the travel transportation and logistics industry. The petitioner wrote the following regarding the project on which the beneficiary would allegedly work:

As part of a new offering, [the petitioner] is in the process of developing a new PRICING

MANAGEMENT/ANALYTICS Product. The Profit Optimization (PO) Pricing Management solution will allow users to analyze prices, elasticity and margins to develop a pricing strategy, generate and implement new or adjusted prices, and monitor the effects of the new prices in the marketplace.

The development of the product will be spread over 18-24 months and the testing/implementation and enhancements will be another 12-15 months after the release. This is going to be a flagship product for and will require a team of minimum 45 resources with combination of Analysts, Programmers, Web site designers, Testers etc.

The high level product pre release summary document is attached for your perusal.

At present, [the beneficiary's] services are expected till [sic] Fall 2011 at which time a further need will be determined. The Pricing Management/Analytics development project is part of [the petitioner's] own product line.

The petitioner also stated that the beneficiary will be working with other analysts, programmers, and testers and would be reporting to the Product Development Vice President.

The product release summary and brochures provided by the petitioner indicates that the project on which the beneficiary would allegedly work belongs to which appears to be a different corporate entity than the petitioner, but is located in the same office as the petitioner.

The petitioner did not provide copies of any contracts or other documentation from clients regarding the in-house project as was requested in the RFE.

The director denied the petition on April 27, 2009.

On appeal, the petitioner provides copies of contracts from some of its railroad and airline clients. However, the petitioner also states that the beneficiary will work on additional features for existing products and no outside clients are involved for the beneficiary's role at this stage. The petitioner also states that is a wholly-owned subsidiary of the petitioner that was acquired in October 2005 and provides a copy of an internal press release regarding the acquisition. The petitioner also provides copies of advertisement listings as well as a breakdown of the beneficiary's responsibilities, which indicates that 30% of the beneficiary's duties will be developing, analyzing, designing and maintaining Intranet/Internet applications while 10% of his time would be spent "[c]onverting documented client needs into program code," 10% on designing application architecture, 10% performing compatibility testing, 10% performing database back-end testing, 20% documenting, and 10% supporting all aspects of the software development cycle and project management.

The AAO will first consider whether the proffered position is a specialty occupation. Section 214(i)(1) of the Immigration and Nationality Act (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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed 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 at 387. 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.

Although the petitioner states that the beneficiary will be working in-house on a project that has not been contracted by a client(s), the evidence submitted indicates that the beneficiary’s alleged work will not be performed in-house for the petitioner, but instead will be performed in-house for another entity that the petitioner claims is its subsidiary. The petitioner provided an internally generated press release to document that it wholly-owns this other entity, but the petitioner did not provide any corporate records, such as stock certificates and share registers, to prove that the other entity is wholly-owned and controlled by the petitioner. 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)).

Additionally, although the petitioner states on appeal that the project on which the beneficiary would allegedly work is internally produced and is not for the benefit of a particular client, part of the beneficiary’s responsibilities is “converting documented client needs into program code.” It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). However, even assuming that the petitioner could demonstrate, which it did not do, that the beneficiary would be working at its offices on an in-house project that has not been commissioned by a client, the petitioner has failed to demonstrate that the proffered position is a specialty occupation.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry’s professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The Programmer Analyst occupational category is encompassed in two sections of the *Handbook* (2010-11 online edition) – “Computer Software Engineers and Computer Programmers” and “Computer Systems Analysts.”

The *Handbook* describes computer programmers as follows:

[C]omputer programmers write programs. After computer software engineers and systems analysts design software programs, the programmer converts that design into a logical series of instructions that the computer can follow (A section on computer systems analysts appears elsewhere in the *Handbook*.). The programmer codes these instructions in any of a number of programming languages, depending on the need. The most common languages are C++ and Python.

Computer programmers also update, repair, modify, and expand existing programs. Some, especially those working on large projects that involve many programmers, use computer-assisted software engineering (CASE) tools to automate much of the coding process. These tools enable a programmer to concentrate on writing the unique parts of a program. Programmers working on smaller projects often use “programmer environments,” applications that increase productivity by combining compiling, code walk-through, code generation, test data generation, and debugging functions. Programmers also use libraries of basic code that can be modified or customized for a specific application. This approach yields more reliable and consistent programs and increases programmers' productivity by eliminating some routine steps.

As software design has continued to advance, and some programming functions have become automated, programmers have begun to assume some of the responsibilities that were once performed only by software engineers. As a result, some computer programmers now assist software engineers in identifying user needs and designing certain parts of computer programs, as well as other functions. . . .

* * *

[M]any programmers require a bachelor's degree, but a 2-year degree or certificate may be adequate for some positions. Some computer programmers hold a college degree in computer science, mathematics, or information systems, whereas others have taken special courses in computer programming to supplement their degree in a field such as accounting, finance, or another area of business. . . .

The *Handbook*'s section on computer systems analysts reads, in pertinent part:

In some organizations, programmer-analysts design and update the software that runs a computer. They also create custom applications tailored to their organization's tasks. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas. (A separate section on computer software engineers and computer programmers appears elsewhere in the *Handbook*.) As this dual proficiency becomes more common, analysts are increasingly working with databases, object-oriented programming languages, client-server applications, and multimedia and Internet technology.

* * *

[W]hen hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with graduate degrees are preferred. For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.

Despite the preference for technical degrees, however, people who have degrees in other areas may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation. . . .

Therefore, the *Handbook's* information on educational requirements in the programmer-analyst occupation indicates that a bachelor's or higher degree, or the equivalent, in a specific specialty is not a normal minimum entry requirement for this occupational category. Rather, the occupation accommodates a wide spectrum of educational credentials.

As evident above, the information in the *Handbook* does not indicate that programmer-analyst positions normally require at least a bachelor's degree in a specific specialty. While the *Handbook* indicates that a bachelor's degree level of education in a specific specialty may be preferred for particular positions, the evidence of record on the particular position here proffered does not demonstrate requirements for the theoretical and practical application of such a level of highly specialized computer-related knowledge.

The record's descriptions of the petitioner's duties do not elevate the proffered position above that of a programmer analyst for which no particular educational requirements are demonstrated. The AAO rejects as unsubstantiated the petitioner's declaration that the proffered position requires an individual with a bachelor's degree in computer science, information technology, engineering or a related field. Again, 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 Treasure Craft of California*, 14 I&N Dec. at 190. In this regard, the

AAO notes that although the descriptions of the proposed duties abound in IT and computer-related terms of art and acronyms that reflect that the duties require technical knowledge in the IT field, it is not self-evident that the performance of any of these duties, or all of them in the aggregate, would require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized IT or computer-related knowledge, as required to qualify the proffered position as a specialty occupation.

As the evidence of record does not indicate that this petition's particular position is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (a) parallel to the proffered position and (b) located in organizations that are similar to the petitioner.

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

The petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The advertisements submitted by the petitioner on appeal provide only job titles and whether the position requires a bachelor's degree. Position duties are not provided in these advertisements so the AAO cannot determine whether the proffered position is sufficiently similar to the positions in the advertisements. Additionally, the advertisements do not indicate that the bachelor's degree must be in a specific specialty.

Next, the petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not develop relative complexity or uniqueness as an aspect of the position, and, to the extent that they are described in the record, the proposed duties are not shown to exceed those of programmer-analyst positions not requiring a person with at least a bachelor's degree in a specific specialty.

Next, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty. To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384.

In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. The petitioner did not provide any information about the credentials of its other positions similar to the one proffered in this petition.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence of record would indicate no specialization and complexity beyond that of a programmer analyst, and as reflected in this decision's discussion of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the *Handbook* does not indicate that the attainment of at least a bachelor's degree in a specific specialty is usually associated with programmer analysts in general.

For the reasons discussed above, the AAO finds that the petitioner has not established that the proffered position qualifies as specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO therefore affirms the director's finding that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation.

Second, the AAO will consider the director's finding that the petitioner failed to submit an itinerary, as required under 8 C.F.R. § 214.2(h)(2)(i)(B), which states, in pertinent part:

Service or training in more than one location. A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.

The AAO finds that the petitioner submitted sufficient evidence to demonstrate that the beneficiary will be working at one location, even though it is not clear that the beneficiary would be working for the petitioner or another entity at that location. Therefore, the AAO finds that the petitioner was not required to submit an itinerary, and this basis for the denial is withdrawn.

Third, the AAO affirms the director's finding that the petitioner failed to establish that the LCA corresponds to the petition. For this additional reason, the petition cannot be approved.

In pertinent part, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B) states:

The petitioner shall submit the following with an H-1B petition involving a specialty occupation: (1) A certification from the Secretary of Labor that the petitioner has filed a labor condition application

The regulation at 8 C.F.R. § 103.2(b)(1) states, in pertinent part:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions.

In addition, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1), states, as part of the general requirements for petitions involving a specialty occupation, that:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

Further, the regulation at 8 C.F.R. § 214.2(h)(2)(E), which states:

Amended or new petition. The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H-1C, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination. In the case of an H-1B petition, this requirement includes a new labor condition application.

It is self-evident that a change in the employer is a material change in the terms and conditions of employment.

Moreover, while DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.*

[Emphasis added].

The LCA and Form I-129 in this matter, which indicate the petitioner as being the employer, do not correspond with the product release summary and brochures provided by the petitioner, which indicate that the beneficiary will actually be working on a project for [REDACTED], rather than the petitioner. Although, for the first time on appeal, the petitioner submitted an informal notice that it acquired a company called [REDACTED] on October 5, 2005, the petitioner failed to submit concrete evidence of this acquisition, such as copies of Articles of Incorporation and/or share records. Therefore, USCIS cannot ascertain that the LCA is valid as the petitioner has failed to demonstrate that it corresponds to the petition. *See id.* As discussed above, a petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). 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. Accordingly, the director's conclusion that the petitioner failed to establish that the LCA is valid is affirmed.

Finally, the AAO does not need to examine the issue of the beneficiary's qualifications because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit an education evaluation as required for a foreign degree or other sufficient documentation to show that the beneficiary qualifies to perform services in a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C). As such, the petition could not be approved even if both of the director's stated grounds for denial had been overcome on appeal.

The appeal will be dismissed and the petition denied 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.