U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: JAN 2 8 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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: 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

On the Form I-129 petition, the petitioner states that it is engaged in data warehouse and business intelligence solutions. It further claims to have been established in 2005, with 22 employees and a gross annual income of $4.4 million. It seeks to continue to employ the beneficiary as a systems 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 revoked the approval of the petition on the grounds that: (1) the proffered position was not a specialty occupation; (2) an employer-employee relationship between the petitioner and the beneficiary had not been established; and (3) a certified Labor Condition Application (LCA) that corresponded to the petition had not been submitted.

On July 21, 2010, the petitioner filed an H-1B petition with the U.S. Citizenship and Immigration Services (USCIS), and it was approved on July 25, 2011.

On October 19, 2011, the director issued an NOIR informing the petitioner that, based on new information received after multiple site visits conducted at the petitioner's business address(es), the validity of the statements set forth in the petition were in question. Specifically, the director noted that based on the new information received and a review of the record as constituted, the petitioner was not employing the beneficiary in a specialty occupation position or maintaining the required employer-employee relationship with the beneficiary.

On November 16, 2011, in response to the director's NOIR, the petitioner resubmitted previously-submitted documentation in support of its contention that it is maintaining the requisite employer-employee relationship with the beneficiary and is employing him in a specialty occupation position. The petitioner provided an additional statement of the duties of the proffered position, in addition to resubmitting documentation from [redacted] and [redacted] which it claims establishes the beneficiary's assignment and the position requirements of the beneficiary for the claimed validity period. The petitioner also resubmitted a copy of its employment agreement with the beneficiary, as well as an itinerary and list of past projects upon which it claims the beneficiary worked.

The director revoked the approval of the petition on January 30, 2012.

On appeal, the petitioner claims that the revocation was erroneous, and submits a six-page letter in support of this contention. The petitioner also resubmits the same documentation previously included in the record in support of the petition.

The AAO turns first to the basis for the director's revocation, and whether this basis provided the director with sufficient grounds for revoking the H-1B petition under the language at 8 C.F.R. § 214.2(h)(11)(iii)(A), the regulation outlining the circumstances under which an H-1B Form I-129 petition's validity will be rescinded.

The regulation at 8 C.F.R. § 214.2(h)(11)(iii), which governs revocations that must be preceded by notice, states:

> (A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
>
> *(1)* The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
>
> *(2)* The statement of facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
>
> *(3)* The petitioner violated terms and conditions of the approved petition; or
>
> *(4)* The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
>
> *(5)* The approval of the petition violated paragraph (h) of this section or involved gross error.
>
> (B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

The AAO finds that the content of the NOIR comported with the regulatory notice requirements, as it provided a detailed statement that conveyed grounds for revocation encompassed by the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A), and allotted the petitioner the required time for the submission of evidence in rebuttal that is specified in the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(B). As will be discussed below, the AAO further finds that the director's decision to revoke approval of the petition accords with the evidence in the record of proceeding (ROP), and that neither the response to the NOIR nor the submissions on appeal overcome the grounds for revocation indicated in the NOIR. Accordingly, the AAO shall not disturb the director's decision to revoke approval of the petition.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's NOIR, dated October 19, 2011; (3) the petitioner's response to the NOIR dated November 16, 2011; (4) the director's January 30, 2012 notice of revocation (NOR); and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

A brief summary of the factual and procedural history between the approval and the decision revoking it follows below.

On July 21, 2011, the petitioner filed the Form I-129 petition, claiming that it is engaged in data warehouse and business intelligence solutions. It further claimed to have been established in 2005, with 22 employees and a gross annual income of $4.4 million. It seeks to continue to employ the beneficiary as a systems analyst.

The director initially approved the petition on July 25, 2011. Upon receipt of new information, the director issued an NOIR on October 19, 2011. The director noted that the actual work location and associated duties of the beneficiary were questionable based on the evidence contained in the record. Specifically, the director advised that it did not appear that the petitioner was conducting business at the address stated, and also that the beneficiary's actual work location was unclear. Citing numerous deficiencies in the evidence provided, including letters submitted by the petitioner's client, and the vendor for which the beneficiary would ultimately provide services, the director afforded the petitioner the opportunity to supplement the record with additional evidence to overcome her preliminary findings.

In a response dated November 16, 2011, the petitioner addressed the director's concerns. The petitioner resubmitted documentary evidence previously submitted with regard to the and agreements, asserting that this documentation contained sufficient evidence to establish that immediate employment in a specialty occupation position was available for the beneficiary and that the petitioner would continue to be the beneficiary's employer. The petitioner restated the nature of the duties of the proffered position and provided additional clarification regarding the workplace of the beneficiary as well as the petitioner's end clients and the nature of those relationships. The petitioner concluded that it was in compliance with the terms and conditions of employment and contended that the petition's approval did not warrant revocation.

The first issue the AAO will address is whether the proffered position is a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 [(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, 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 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), U.S. Citizenship and Immigration Services (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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position").

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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The AAO notes that, as recognized by the court in *Defensor*, *supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-388. The 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.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

In addressing whether the proffered position is a specialty occupation, the record is devoid of sufficient evidence as to where and for whom the beneficiary would be performing his services during the requested employment period, and whether his services would in fact be that of a systems analyst.

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)* indicates that contracts are 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. Furthermore, the regulations at 8 C.F.R. §§ 103.2(b)(8) and 214.2(h)(9)(i) provide USCIS broad discretionary authority to require such evidence as contracts and itineraries to establish that the services to be performed by the beneficiary will be in a specialty occupation during the entire employment period requested in the petition. Here, the petitioner was put on notice by the director that, absent such evidence as work orders or agreements with end-clients, the assertions made in support of the petition were insufficient to establish eligibility for the benefit sought in this matter.

In the petitioner's support letter dated July 18, 2011, the petitioner states that the beneficiary will continue to work as a systems analyst. As stated by the petitioner, the proffered position's duties would be as follows:

> As a Systems Analyst with [the petitioner], [the beneficiary] will be responsible to interacting with developers and the product marketing to analyze the user requirements, functional specifications to understand product and its features. He will analyze businesses applications to automate or improve existing systems. Confer with personnel involved to determine current operational procedures,

identify problems, and learn input and output requirements. Perform object oriented analysis, and development of software for client server platforms using computer skills. Analyzing users' data, general modes of operation, existing operation procedures, and problems and devising methods and approaches to meet the users' need based upon knowledge of data processing techniques, management information, and statistical, audit, and control systems. The position involves extensive use of modern computer languages and high-end databases.

Approximate percentage of time:
Software Configuration Management: 40%
Analyze and development of software 40%
Programming, Coding 10%
Miscellaneous: approx. 10%

The petitioner also states that to effectively perform the work of the proffered position, the incumbent must have at least a bachelor's degree in engineering management, electronics engineering, electrical engineering or computer engineering.

In an itinerary submitted with the petition, the petitioner stated that the beneficiary's work locations would be , California and New York, New York, pursuant to an arrangement with . The petitioner also submitted a letter from , Human Resources/IT Staffing Manager for dated January 28, 2011, which stated that the beneficiary would "be retained by through " and would work in New York, New York. An undated letter from , Vice President of Recruitment for made identical statements. No contracts, work orders, or other such documentation was submitted.

In response to the NOIR, which requested more specific information regarding the project(s) upon which the beneficiary would work and the nature of the claimed relationship between the petitioner, , and the petitioner simply restated the claims previously made in support of the petition and resubmitted the same documentation. No additional documentary evidence clarifying the director's queries was submitted.

Upon review, the petitioner has failed to establish that the proffered position is a specialty occupation. The petitioner asserts that the beneficiary will be working in New York, New York for through However, other than generic, one-page letters from each company, there is no documentary evidence establishing a contractual agreement between the petitioner and either of these companies. There is no documentation, such as work orders, statements of work, or other agreements establishing the nature or duration of the project(s) upon which the beneficiary will work other than a document entitled itinerary prepared by the petitioner. Moreover, the petitioner's "itinerary" for the beneficiary's services indicates that during the requested validity period, he will also be working in , California, which is where the petitioner is based. However, the record contains no statement regarding an in-house project or other such work upon which the beneficiary will be assigned, nor does it contain a detailed itinerary outlining the exact dates of each proposed project and the exact duration of each project.

The nature of the petitioner's business and the documentation contained in the record indicate that the petitioner is engaged in the outsourcing of personnel to client sites as needed. Although the petitioner claims that the beneficiary will work for in New York, it also indicates that the beneficiary will work in , California, yet submits no evidence or explanation clarifying this statement. As discussed above, the petitioner's evidence of the beneficiary's assignment with is deficient, since the record contains no contractual agreement or work order outlining the conditions of the beneficiary's employment or the nature of the agreement between the petitioner, , and . The petitioner also submits no evidence to support a finding that the beneficiary will also work in , California, since the record contains no discussion of in-house projects or other such work for the beneficiary at the petitioner's home office. Although the petitioner states in response to the NOIR in its letter dated November 16, 2011 that the beneficiary will support the petitioner's product development division team and is expected to work in California providing remote support for clients, the record as initially constituted points instead to the beneficiary working in the New York area, including the fact that the Form I-129 lists the beneficiary's current address as being in , New Jersey. Other evidence includes the results of the site visit to the petitioner's office, which the director states revealed only two, ten by twelve feet suites, "containing one desk, two laptops, [and] no visible phones or fax." In addition, an acting manager of the petitioner informed officers that "no employees were at the [location."

The petitioner makes no attempt to retract its initial claims regarding the assignment, and states simply that if the beneficiary has to travel for work during the requested validity period, he will travel to the site in New York. 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).

Nevertheless, even if the beneficiary were to work in-house for part of the requested three-year validity period, it appears that the nature of the petitioner's business is to outsource its personnel to client sites as needed, as evidenced by the letters from , and the statements of the petitioner in its supporting documentation. The exact nature of the beneficiary's assignments throughout the validity period, therefore, will vary based on client needs during the duration of the petition, even if the beneficiary is working in-house at the petitioner's offices, since it appears he will be working remotely for clients not yet identified. The uncertainty surrounding the immediate project, future projects, and the absence of documentary evidence demonstrating the existence of an in-house project for any part of the requested validity period renders it impossible to find that the proffered position is a specialty occupation, since no specific and corroborated description of the duties the beneficiary will perform for each end-client is included in the record.

The brief description of duties in the petitioner's support letter is generic and fails to specifically describe the nature of the services required by the beneficiary on the project in question. In addition, the fact that the petitioner contradicts its initial claims by claiming in the response to the NOIR that the beneficiary will work onsite at the petitioner's office and not in New York as

originally claimed suggests that the beneficiary's assignments will fluctuate throughout the validity period. Moreover, the statement that the beneficiary will work remotely for clients from the petitioner's offices indicates that the beneficiary's duties on a given day may vary based on a particular remote client's needs. The very nature of the petitioner's business, as evidenced by the statements of the petitioner, confirms that the beneficiary's duties and responsibilities are subject to change in accordance with client requirements.

Moreover, even if the beneficiary can perform some of his duties from the petitioner's offices, it appears that the work of the beneficiary, and the work of the petitioner is general, is dependent on contracts with clients who request specific services from contract workers ultimately supplied by the petitioner. Therefore, absent evidence of contracts or statements of work describing the duties the beneficiary would perform and for whom throughout the entire validity period, the petitioner fails to establish that the duties that the beneficiary would perform are those of a specialty occupation. 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

As indicated above, USCIS routinely looks to *Defensor v. Meissner,* 201 F.3d 384, which requires an examination of the ultimate employment of the beneficiary to determine whether the position constitutes a specialty occupation. The petitioner in *Defensor*, Vintage Health Resources (Vintage) is 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* also found 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. *Id.* The *Defensor* court held that the legacy Immigration and Naturalization Service (INS) 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 job description provided by the petitioner, as well as various statements from the petitioner both prior to adjudication and on appeal, indicate that the beneficiary will be working on different projects throughout the duration of the petition. Whether the beneficiary works in-house or at a client site is irrelevant to this issue, since it is apparent that the duties of the beneficiary will be dictated by the specific needs of an end-client on a given project. Therefore, absent clear evidence of the beneficiary's particular duties on a particular project for the entire requested validity period, the AAO cannot analyze whether his duties would require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. For this reason, the petition must be revoked.

The next issue before the AAO is whether or not the petitioner qualifies as a United States employer. As detailed above, the record of proceeding lacks sufficient documentation evidencing what exactly the beneficiary would do for the period of time requested or where exactly and for whom the beneficiary would be providing services. Given this specific lack of evidence, the petitioner has failed to establish who has or will have actual control over the beneficiary's work or duties, or the condition and scope of the beneficiary's services. In other words, the petitioner has failed to establish whether it has made a bona fide offer of employment to the beneficiary based on the evidence of record or that the petitioner, or any other company which it may represent, will have and maintain an employer-employee relationship with the beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). As previously discussed, there is insufficient evidence detailing where the beneficiary will work, the specific projects to be performed by the beneficiary, or for which company the beneficiary will ultimately perform these services. Therefore, the director's decision is affirmed, and the approval of the petition must be revoked for this additional reason.

The final issue before the AAO is whether the petitioner submitted a valid LCA for all work locations. General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1) in pertinent part as follows:

> Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.

Further discussion of the filing requirements for applications and petitions is found at 8 C.F.R. § 103.2(b)(1):

> *Demonstrating eligibility.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable

> regulations and other USCIS instructions. Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request.

The regulations require that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner obtain a certified LCA from DOL in the occupational specialty in which the H-1B worker will be employed. *See* 8 C.F.R. § 214.2(h)(4)(i)(B). The instructions that accompany the Form I-129 also specify that an H-1B petitioner must submit evidence that an LCA has been certified by DOL when submitting the Form I-129.

Additionally, the regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) provides as follows:

> *Service or training in more than one location.* A petition that 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 USCIS as provided in the form instructions. The address that the petitioner specifies as its location on the I-129 shall be where the petitioner is located for purposes of this paragraph.

The petitioner indicated on the Form I-129 that the beneficiary would be working at the petitioner's office in California, as well as onsite for in New York, New York, and the certified LCA submitted with the Form I-129 reflected these two work locations. However, as noted above, numerous discrepancies regarding the actual and potential work locations of the beneficiary have been noted. Specifically, the initial evidence claimed that the beneficiary would work solely in New York, whereas the response to the NOIR indicated that contrary to that claim, the beneficiary would be working onsite at the petitioner's offices and may potentially travel to the offices of in New York if required by the client. While the LCA submitted appears to accurately reflect the work locations claimed on the Form I-129 petition, the AAO notes the petitioner's claims in response to the NOIR that the beneficiary's duties will be rendered to clients remotely from the petitioner's office.

In this case, therefore, it is unclear where the beneficiary will work during the entire three-year employment period requested in the petition. Therefore, even though the petitioner submitted a certified LCA for two employment locations in California and New York, New York, respectively, it has nevertheless failed to submit a valid LCA that corresponds to all of the beneficiary's work locations, as those locations are either unknown or merely speculative for the reasons previously discussed.

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.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, in addition to failing to submit the required itinerary, *supra*, the petitioner has also failed to provide valid LCAs that correspond to all of the beneficiary's work locations. In view of the foregoing, the petitioner has not overcome this basis of the director for revoking the petition's approval. For this additional reason, the approval of the petition must be revoked.

Accordingly, the approval of the instant petition violated 8 C.F.R. § 214.2(h) or involved gross error. *See* 8 C.F.R. § 214.2(h)(11)(iii)(A)(5).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The approval of the petition is revoked.