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FILE: WAC 03 160 51368 Office: CALIFORNIA SERVICE CENTER Date: OCT 06 2006

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:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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.

The petitioner is a computer software design and development firm that seeks to employ the beneficiary as a software engineer. 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).

The director denied the petition because the petitioner did not submit an itinerary of the beneficiary's proposed employment for the entire term of his requested stay in the United States with accompanying Labor Condition Applications (LCA) for each work location after having requested copies of the petitioner's client contracts under which the beneficiary would work. On appeal, the petitioner states that it has complied with the director's request for evidence, that the work location of the beneficiary had not been misrepresented and that the petition should be approved.

The first issue to be determined is whether the petitioner provided a complete itinerary¹ for the beneficiary's work to be performed from June 12, 2003 through June 12, 2006.

Pursuant to the language at 8 C.F.R. § 214.2(h)(2)(i)(B), employers must submit an itinerary with the dates and locations of employment if the beneficiary's duties will be performed in more than one location.

In his request for evidence, the director asked for copies of contracts between the petitioner and its clients for whom the beneficiary would perform services. The director also asked for information regarding the location of the beneficiary's employment. In the [REDACTED] memorandum cited at footnote 1, the director has the discretion to request that the employer who will employ the beneficiary in multiple locations submit an itinerary. Upon review, the director properly exercised his discretion to request the contracts described above. However, the documentation submitted does not establish a complete itinerary for the beneficiary from June 12, 2003 through June 12, 2006. The petitioner stated in its letter of December 10, 2003 that the beneficiary is presently working at [REDACTED] San Jose, CA and that he is expected to work there for three years until June of 2006. The purchase order submitted by the petitioner, however, does not corroborate the petitioner's statement. That purchase order states that the term of the work to be performed at [REDACTED] shall commence October 2, 2003 and terminate in eight months (June of 2004). No additional documentation was provided by the petitioner, except its unsubstantiated statement, establishing a work itinerary for the beneficiary until June 12, 2006. Simply going on the 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 190 (Reg. Comm. 1972)). Accordingly, the petitioner has failed to comply with the requirements at 8 C.F.R. § 214.2(h)(2)(i)(B) and the petition must be denied.²

¹ See Memorandum from [REDACTED] Assistant Commissioner, INS Office of Adjudications, *Interpretation of the Term "Itinerary" Found in 8 C.F.R. 214.2(h)(2)(i)(B) as it Relates to the H-1B Nonimmigrant Classification*, HQ 70/6.2.8 (December 29, 1995).

² As noted by Assistant Commissioner Aytes in the cited 1995 memorandum, "[t]he purpose of this particular regulation is to [e]nsure that alien beneficiaries accorded H status have an actual job offer and are not coming to the United States for speculative employment."

The director stated in his decision that the petitioner had failed to provide a Labor Condition Application (LCA) valid for the location of employment. The petitioner initially submitted an LCA with a work location in Pasadena, CA. In response to the director's request for an itinerary and for contracts of employment, the petitioner submitted a contract of employment and work order for the beneficiary to perform services for [REDACTED]. The location of employment was not identified on the work order. In an accompanying letter from the petitioner, the petitioner stated that the beneficiary would be working for [REDACTED] in San Jose, CA. Thus, the director properly concluded that the petitioner had not submitted an LCA for Santa Clara. On appeal, the petitioner submits a second LCA valid for Santa Clara, CA. Santa Clara is in the same Standard Metropolitan Statistical Area as San Jose, and thus this LCA would cover the eight month period of employment for [REDACTED]. However, because the petitioner has not submitted a complete itinerary of employment, CIS cannot determine whether the Santa Clara and Pasadena LCAs are valid for all work locations throughout the employment period. Thus the petition must be denied.

Beyond the decision of the director, the evidence of record establishes that the petitioner is an employment contractor in that the petitioner will place the beneficiary at multiple work locations to perform services established by contractual agreements for third-party companies. The petitioner, however, has provided no contracts, work orders or statements of work describing the duties the beneficiary would perform for its clients and, therefore, has not established the proffered position as a specialty occupation.

The court in *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000) held that for the purpose of determining whether a proffered position is a specialty occupation, the petitioner acting as an employment contractor is merely a "token employer," while the entity for which the services are to be performed is the "more relevant employer." The *Defensor* court recognized that evidence of the client companies' job requirements is critical where the work is to be performed for entities other than the petitioner. The 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.

As the record does not contain any documentation for whom the beneficiary will provide services that establishes the specific duties the beneficiary would perform under contract for [REDACTED] or any other of the petitioner's clients, the AAO cannot analyze whether these duties would require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation. Accordingly, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)(I). For this additional reason, the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to sustain that burden.

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