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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



U.S. Citizenship
and Immigration
Services

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FILE: WAC 07 139 52289 Office: CALIFORNIA SERVICE CENTER Date: **OCT 06 2009**

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:

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

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


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, 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 180 persons, and has an estimated gross annual income of \$28,000,000 and an estimated net annual income of \$2,500,000. It seeks to employ the beneficiary as a systems analyst from April 9, 2008 to April 1, 2010. 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 March 3, 2008, the director denied the petition, determining that the petitioner's unusual pattern of H-1B petition filings raised legitimate concerns regarding the evidence submitted and the petitioner's compliance with the terms and conditions of employment in its petition. The director determined that the petitioner had not established that the duties of the proffered position comprise the duties of a specialty occupation and that the petitioner had sufficient work for the requested period of intended employment.

On appeal, the petitioner submits a statement and documentation in support of the Form-I-290B, Notice of Appeal, and contends that the director's decision is erroneous.

The record includes: (1) the Form I-129 and supporting documentation filed with United States Citizenship and Immigration Services (USCIS) on April 9, 2007; (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 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 April 5, 2007 letter appended to the petition that it is in the business of "designing and developing software solutions for a wide range of commercial and scientific applications." It further stated that its mission was "to help our clients succeed in the global market place by exceeding their expectations and delivering value in everything we do." Regarding the beneficiary, the petitioner stated that the beneficiary would be employed as a computer systems analyst with an annual salary of \$53,000. The petitioner submitted an April 5, 2007 offer of employment offering the beneficiary the position of systems analyst with an annual salary of \$53,000, health insurance, and legal fees to obtain H-1B classification. The initial record also included a Form ETA 9035E, Labor Condition Application, certified by the Department of Labor on April 6, 2007 for a systems analyst position in Arlington Heights, Illinois with a prevailing wage of \$52,998 and the annual rate of pay for the intended beneficiary at \$53,000.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on June 29, 2007. 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 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 provide a comprehensive description of the beneficiary's proposed duties; asked for a description of conditions of employment, such as contracts or letters from authorized officials of the ultimate client companies; requested 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 that the temporary employment is requested; requested documentary examples of the petitioner's products or services; and asked for any other documents that the petitioner believed would substantiate sufficient qualifying employment. The director also requested copies of the petitioner's federal tax returns and its state and federal quarterly wage reports.

In a response dated September 10, 2007, the petitioner addressed the director's queries. The petitioner noted that it is a "software developing company that provides consulting and business solutions to a large number of clients from various industries." The petitioner also noted that it is a certified partner to SAP and a large portion of its business is SAP implementation. The petitioner indicated:

[The beneficiary] will be performing highly specialized and complex duties as a System [sic] analyst. He will be required to develop customer software and customize functional modules of software applications. After analyzing the electronic data processing needs, the relevant data port capacities, and their computer hardware specifications, he will consult with management and will prepare a design plan, which is with the company's available resources. After completing these computer software designs, [the beneficiary] will write fundamental reports, analyzing data gathered, to ensure that the company's electronic data is being processed in an efficient and timely manner. This will encompass assessments of all modules' technical adequacy, and their efficient integration into seamlessly functioning software systems.

The petitioner also noted that its new employees usually did not join the company until October, that some of its former employees transferred to other companies without the petitioner's permission, and that it had requested the withdrawal of H-1B petitions for those employees. The petitioner provided copies of its federal tax returns for 2005 and 2006, but only provided the cover sheet of the Internal Revenue Service (IRS) Form 941, Federal Quarterly Wage reports for the previous four quarters.

As referenced above, the director determined that the petitioner's unusual pattern of H-1B petition filings raised legitimate concerns regarding the evidence submitted and the petitioner's compliance with the terms and conditions of employment in its petitions. The director found: that the petitioner had misrepresented its level of income on the Form I-129; that public records showed that the petitioner operated a virtual office, an office shared by a related company that also claimed to employ a large number of employees; and that the petitioner filed an extraordinarily high number of petitions in relation to the number of employees it claimed on the Form I-129. The director also identified six of the petitioner's employees and noted that based on the information in the record, it appeared that there was no work for the employees when the individuals were first approved or that

the individuals were never paid the wage proffered in the petition relating to them. The director concluded that the petitioner had not established that the duties of the proffered position comprise the duties of a specialty occupation and that the petitioner had sufficient work for the beneficiary for the requested period of intended employment.

On appeal, the petitioner asserts that it has described the beneficiary's duties in detail, that it is the beneficiary's actual employer, and that the beneficiary would be employed at the petitioner's premises in Arlington Heights, Illinois. The petitioner notes that it included an estimated figure regarding its 2007 income on the Form I-129. The petitioner also 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 also contended that although it shared office space with its sister company, it did not operate a "virtual" office but occupied actual premises.

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 so establish.

Regarding the director's comments concerning the petitioner's failure to comply with the terms and conditions shown on the Form I-129, the AAO observes that the petitioner's claim that its gross annual income is \$28 million appears to be a rounding computation and is not significantly inconsistent from the petitioner's 2006 Internal Revenue Services (IRS) Form 1120, U.S. Corporation Tax Return, showing the petitioner's reported income for 2006 is \$25,505,940. The figure of \$28 million claimed by the petitioner on the Form I-129 in light of the petitioner's income for 2005 and 2006 which shows a steady increase in funds appears to be an accurate, estimated figure. The AAO finds no fault with the petitioner for making this claim and withdraws the director's comments regarding the petitioner's gross annual income.

Additionally, the director found that the petitioner's office is actually a virtual office shared by other companies. The AAO has reviewed a copy of the petitioner's lease dated January 25, 2005. The AAO notes that the lease agreement is for 5,682 square feet of office space at Suite 54-55, 415 West Golf Road, Arlington Heights, Illinois. The AAO observes that it does not appear that all of the petitioner's claimed number of employees (180) could work in 5,682 square feet of space. Further, the petitioner acknowledges that it occupies only Suite 55, while its sister company occupies Suite 54, further limiting the petitioner's viable working space. This limited amount of office space accentuates the fact that the petitioner cannot employ the majority of its workforce at this location and that it must operate as a contracting company that places H-1B beneficiaries in various locations. As such, the director's comments with regard to this part of this issue will not be disturbed.

Finally, the director noted that the petitioner had filed an extraordinarily high number of petitions in relation to the number of employees it claimed on its petition. The director determined that the evidence raised concerns regarding the petitioner's compliance with the terms and conditions as shown on the Form I-129. The petitioner asserts on appeal that it could not control the number of employees transferring to other companies and that it strives to comply with the H-1B regulations by withdrawing all approved H-1B petitions for employees who are no longer employed by it. The record includes a number of letters to USCIS cancelling H-1B visa petitions for employees the petitioner indicates it no longer employs. The AAO acknowledges the letters sent to USCIS but 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 raises concerns regarding the legitimacy of the H-1B petitions. 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 observes that the director's concerns are justified; thus, the AAO will not disturb the director's decision with regard to this issue.¹

Turning to the most crucial issue in the adjudication of an H-1B petition, the AAO has reviewed the record to determine if the petitioner has provided sufficient evidence to establish that the proffered position is a specialty occupation. Upon that review the AAO finds that the petitioner has not supplied the requested contracts underlying the purported position available for the beneficiary. In addition, the AAO finds that the petitioner's claim that the beneficiary will work or initially worked in-house is not supported by any work product prepared by the beneficiary or any substantive evidence that the petitioner has ongoing in-house work or could accommodate the number of individuals for whom it files petitions to work at its office location. The petitioner has not provided documentary evidence that supports its contention that it has regular, systematic and continuous in-house computer operations and the ability to support the number of workers it currently employs. 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 does not establish that the beneficiary has a legitimate job offer for the beneficiary with a comprehensive description of the actual duties comprising the proffered position.

¹ 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 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.

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.

On the Form I-129, the petitioner stated that the proffered position is that of a “Systems Analyst.” In the petitioner’s March 29, 2007 letter appended to the petition, the petitioner indicated the beneficiary’s responsibilities would include:

- Identifying systems and business requirements for new/revised automated systems.
- Developing specifications and conducts internal and external specification reviews for functionality.
- Developing and write 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 makes 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.
- Provide linkage and continuity 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 & delivery, workflow management, taxonomy management, website content management governance.
- Participate in developing unit objectives to align with overall business plan[.]
- The break up of the responsibilities would be as following:
 - Business System Requirement Gathering 15%
 - Business System Requirement Analysis 40%
 - Business System Evaluation and Design 15%
 - Coordinating with Technical & Business Teams 10%
 - Functional/System Testing 10%
 - Documentation 10%

However, no independent documentation to further explain the nature and scope of these duties was submitted. Noting that the petitioner is engaged in the software development/computer consulting business, the director indicated that USCIS must examine the ultimate employment of the beneficiary to determine whether the proffered position qualifies as a specialty occupation. Although the director requested specific forms of evidence that would establish the beneficiary's ultimate employment and the duties relating to that employment, the petitioner failed to provide such evidence.

In the petitioner's response to the director's RFE, the petitioner added that it provides consulting and business solutions to a large number of clients from various industries and that it is a certified SAP partner. The petitioner also provided a general statement regarding the duties the beneficiary would be expected to perform. The descriptions of duties provided by the petitioner are generic and do not provide a comprehensive understanding of what comprises the beneficiary's actual work duties. The descriptions provided by the petitioner provide an overview of the duties of a systems analyst. Such an "all-purpose" description is insufficient to establish a position as a specialty occupation. There is no information that provides the details specific to the job offered to the beneficiary sufficient to conclude that the proffered position actually involves specialty occupation duties. The AAO observes that due to the wide range of skills required for many computer positions, there are many paths of entry into such positions including associate degrees, technical certificates, and general fields of study at the baccalaureate level. See the Department of Labor's *Occupational Outlook Handbook* on Computer Specialists.

The AAO finds that the above generic descriptions of duties and the other documentation in the record, even when reviewed in totality, do not provide sufficient details regarding the specifics of the job offered or the location(s) where the services will be performed during the requested employment period. The AAO reiterates 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 beneficiary will be expected to perform. The AAO is unable to discern from the information in this record, the nature of the beneficiary's purported duties for either the petitioner or the ultimate end user company. The record does not include information regarding specific projects, tasks, or other details regarding what project(s) the beneficiary will be working on. The record is without the underlying evidence of the actual work to be performed or other evidence to support the petitioner's claim that the proffered position is a specialty occupation. Failing to provide evidence of end contracts in effect when the petition was filed that substantiate that the beneficiary would be providing specialty occupation services precludes a finding of eligibility in this matter. 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. The AAO notes that despite the director's specific request for this evidence, the petitioner failed to submit such evidence that relates specifically to the beneficiary.² The record does not substantiate

² The regulations state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). Failure to submit requested evidence

that the petitioner had specific projects for which the beneficiary's services were required, had control over the beneficiary's work product, that any work assigned would be work performed by the worker as part of the employer's regular business and that any work performed would be commiserate with the duties of a specialty occupation.

Again, 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 evidence of contracts, work orders, in-house projects, or statements of work describing the specific duties the end use company requires the beneficiary to perform, USCIS is unable to discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through a baccalaureate program. 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).

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

The court in *Defensor* held that for the purpose of determining whether a proffered position is a specialty occupation, the petitioner acting as an employment contractor is merely a "token employer," while the entity for which the services are to be performed is the "more relevant employer." *Id.* at 388. The *Defensor* court recognized that evidence of the client companies' job requirements is critical where the work is to be performed for entities other than the petitioner. The *Defensor* court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.*

In this matter, the record demonstrates that the petitioner acts as an employment contractor. The petitioner has not provided substantive evidence of in-house projects to which the beneficiary would be assigned or the work the beneficiary will perform. The petitioner's failure to provide work orders

that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

or employment contracts between the petitioner and its clients throughout the requested employment period renders it impossible to conclude for whom the beneficiary will ultimately provide services, and exactly what those services would entail. The AAO, therefore, is unable to analyze whether the beneficiary's duties 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)(iii) 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).

The petition will be denied and the appeal dismissed for the above stated reason. 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.