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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**

DATE: **JUN 20 2014**

OFFICE: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

N.B./AKM
for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center ("the 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 petitioner on the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), describes itself as a "Computer Consulting" business. The petitioner states that it was established in 1989, and employs more than 7,500 persons in the United States. It seeks to employ the beneficiary in a position to which it assigned the job title "Consultant" 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 determining that the petitioner failed to establish that the duties of the proffered position comprise a specialty occupation and that the petitioner has sufficient work for the requested period of intended employment.

The record of proceeding before the AAO contains: (1) the 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) the Form I-290B, Notice of Appeal or Motion (Form I-290B), the petitioner's letter and additional documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition.¹ Accordingly, the appeal will be dismissed and the petition will remain denied.

I. FACTS AND PROCEDURAL HISTORY

In the March 26, 2013 letter submitted in support of the petition, the petitioner stated that it "is one of the largest management and IT consulting firms in the world and a leading provider of technology, consulting, and outsourcing services." The petitioner asserted that it "is not a staffing agency, as evidenced by the documentation submitted, which establishes that it is a global information technology consulting company providing business software solutions to its clients." The petitioner stated that the beneficiary in the position of Consultant "will be conscientious for configuration, integration and construction of test cases. Specifically, [the beneficiary] will be assigned to work on IT development projects for our client, [REDACTED]

The petitioner indicated that the beneficiary's responsibilities will include:

- Develop application systems using approved techniques as requested by end-users
- Test and document changes for new development and maintenance
- Execute implementation plans for programs and subsystems and provide support to production systems

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- Execute implementation plans for programs and subsystems and provide support to production systems [sic]²
- Ensure quality aspects by identifying, recommending, developing and modifying various modules to achieve optimal performance and increase productivity and performance

The petitioner added that the "position of Consultant is a specialty occupation and, therefore, professional in nature, requiring the completion of a Bachelor's degree or its foreign equivalent in computer science, engineering or a related field."

The petitioner appended the requisite Labor Condition Application (LCA) to the petition, which indicates that the occupational classification for the position is "Computer Systems Analysts" SOC (ONET/OES) Code 15-1121, at a Level I (entry level) wage. The LCA identified the beneficiary's places of employment as [REDACTED] and the petitioner's office at [REDACTED]. The LCA was certified for a validity period beginning September 12, 2013 to September 11, 2016.

Upon review of the initial record, the director requested additional information from the petitioner to demonstrate that it has an employer-employee relationship with the beneficiary and has the right to control the beneficiary's work. The director also requested, among other things, copies of signed contractual agreements, statements of work, work orders, service agreements and letters between the petitioner and the authorized officials of the ultimate end-client companies where the work will actually be performed, including a detailed description of the duties the beneficiary will perform and the qualifications that are required to perform the job duties.

In an October 4, 2013 letter in response, the petitioner noted that the beneficiary is currently employed with its subsidiary in India, as a Consultant. The petitioner indicated that in this position, the beneficiary "has been assisting with complex IT development projects for Petitioner's client, [REDACTED] over the past several months" and that the petitioner requires his "services in the U.S. at this time, in order to continue his work on complex programs for this very important customer"

The petitioner referenced an itinerary submitted with the response and stated that the itinerary "confirms" that the "Beneficiary will be assigned to work on complex development projects being carried out by Petitioner for the client, [REDACTED] the location of the services will be at the client's premises at [REDACTED] and that the beneficiary's services are to be provided through September 2016, the end of the requested validity period. The petitioner indicated that the beneficiary "will be responsible for the development and support activities within the scope of the complex [REDACTED] program at [REDACTED] under the direct control and supervision of Mr. [REDACTED] the petitioner's employee. The petitioner also provided "[a]n overview of Beneficiary's responsibilities" which included the following:

² The petitioner repeats this responsibility in its description.

- Understanding the business problem & providing solutions to client.
- Preparing High level Design & Detailed Design for the project.
- Interacting with client to analyze/clarify the requirements & share it with offshore.
- Providing Estimation for Change Request Minor & Bigger Enhancements
- Implementing the change for Minor & Major Enhancements.
- Designing User Interface.
- Preparing test cases and scenario's for Junit test case.
- Bug fixing.
- Providing project delivery warranty support to client after project gone to production.

The itinerary submitted in response to the director's RFE identified the beneficiary as the employee, the project as [REDACTED] the client's location as in [REDACTED] and the start date as January 2012 and the end date as April 2015. The itinerary is signed by [REDACTED] Senior Manager and repeats the description of duties set out in the petitioner's response to the director's RFE.

The record also included a September 13, 2013 letter on [REDACTED] letterhead, confirming that [REDACTED] is a party to a master's service agreement with the petitioner under which the petitioner provides technology and consulting type services. The [REDACTED] representative stated: "[d]ue to the specialized nature of the work the minimum requirement to perform these specialized jobs is a Bachelor's Degree in Computer Science, Engineering, technology, science, or a related field." The [REDACTED] representative also noted that the petitioner's employee has been assigned to [REDACTED] account pursuant to a Statement of Work (SOW) under the Master Outsourcing Services Agreement. The petitioner provided a copy of the SOW, identified as Deliverables-Based, which includes the request date as August 8, 2013 but with the majority of the remaining portion of the SOW redacted.

The record further included: an August 2, 2013 employment offer to the beneficiary; a schedule of benefits; and a sample of the petitioner's annual review process.

Upon review of the record, the director denied the petition, for the reasons referenced above. The director specifically noted the redacted SOW submitted for the record and the petitioner's failure to provide the end-client's description of duties the beneficiary would perform. The director determined that without evidence supporting the petitioner's claim that specialty occupation work existed for the beneficiary to perform, the record did not establish that the duties comprised the duties of a specialty occupation and that the petitioner has sufficient H-1B work for the duration of the requested employment period.

On appeal, the petitioner reiterates that it is not a staffing company, but rather that it engages clients, develops a project from start to finish, and employs people who can complete the tasks for it. The petitioner notes that it has been doing business with [REDACTED] for several years but that

prohibits the release of contracts and SOWs for immigration purposes. The petitioner indicates, however, that has released a less redacted SOW to establish the petitioner's relationship with them. The petitioner also references a revised itinerary prepared by its employee, Senior Manager.

The record on appeal includes a document labeled "Omnibus Statement of Work to Master Outsourcing Services Agreement" entered into by the petitioner and with an effective date of June 1, 2013, continuing until May 31, 2014, unless terminated earlier. The document identifies two types of work requests that designates as required under the SOW: (a) Work Request – Staff Supplementation or (b) Work Request – Deliverable based. Section 5 of the Omnibus SOW reads, in pertinent part:

5.1 Staff Supplementation – For Staff Supplementation Work Requests, Supplier shall provide the Supplier Personnel listed in the individually approved Work Requests . . . to perform the functions, activities and responsibilities designated by

5.2 Deliverables-based – For Deliverables-based Work Requests, Supplier shall perform Services and provide Developed Technology (the "Deliverables").

The attached Work Request, which is the same Work Request as previously submitted, is also redacted. That is, the Work Request, which is identified as Deliverables-based, does not identify the work (Deliverables) that will be performed pursuant to it.

The petitioner also submitted two documents signed by one of the petitioner's senior managers. The first document provides a general description of the project to which the beneficiary will be assigned. Mr. notes the estimated date for completion of this project is April 18, 2015 with the possibility of extension. Mr. states that the beneficiary will work as a "Technical Application Specialist (Consultant)," will work at and will perform the following activities:

1. Participate in Requirement Gathering, Global Definition, and Concept phase of the project. Generate business requirements understanding document as required by conducting workshops/meetings with business users[.] 10%
2. Provide mock ups and data samplings to business team to help them understand the expected changes in application and business rules. 2%
3. Attend detailed Functional Requirements walkthrough sessions for each application area and address specific technical challenges with possible solution alternatives. 2%
4. Involve in Solution Definition phase of the project and provide impact assessment on the upstream & downstream interfaces. 3%
5. Work with Business Analysts, Solutions and Application Development Managers to prepare system specification document for application enhancement request. 10%

6. Prepare Detail Design documents for each impacted application area and conduct Detail Design walkthrough sessions with business & IT stakeholders. 15%
7. Co-ordinate with offshore [petitioner's] team and perform Construction/Unit Testing of each impacted application area. 30%
8. Review code developed by offshore team, suggest changes to meet quality standards and conduct code walkthrough session with IT stakeholders. 10%
9. Address functional queries/issues raised by business users by proposing right action plans. 4%
10. Determine & document performance impacts to each impacted application work with infrastructure teams for resolution as required. 3%
11. Co-ordinate across application teams to identify technical constraints/issue/query and propose solution / track them to closure. 2%
12. Facilitate User Acceptance Testing phase and attend UAT defect meetings to provide fix/resolution to issues. 5%
13. Daily interaction and communication with customer for discussing project issues and scope changes. 2%
14. Communicate project status to the [petitioner's] team and schedule weekly status review meetings. 2%

The second document is a revised itinerary. Mr. [REDACTED] repeats the job duties listed on the initial itinerary and in the petitioner's letter in response to the director's RFE.

Mr. [REDACTED] states further that the beneficiary is expected to be assigned to the [REDACTED] project to perform work at the following address(es):

- [REDACTED]
- [REDACTED]
- [REDACTED]

In the letter on appeal, the petitioner asserts that although Mr. [REDACTED] states that the beneficiary may work at additional work locations not mentioned in the Form I-129 petition, the petitioner would file an amended H-1B petition in the event the beneficiary is moved to the other [REDACTED] locations.

II. LAW AND ANALYSIS

A. Specialty Occupation

To meet its burden of proof on this issue, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements. 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 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, supra*. To avoid this 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.

As such and 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. *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.

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, location of employment, proffered wage, *et cetera*. The petitioner initially provided a broad description of the proposed duties of the proffered position. On the certified LCA, the petitioner attested that the proffered position is a Level I computer systems analyst.

One consideration that is necessarily preliminary to, and logically even more foundational and fundamental than the issue of whether a proffered position qualifies as a specialty occupation, is whether the petitioner has provided substantive information and supportive documentation sufficient to establish that, in fact, the beneficiary would be performing services for the type of position for which the petition was filed (here, a computer systems analyst). Another such fundamental preliminary consideration is whether the petitioner has established that, at the time of the petition's filing, it had secured non-speculative work for the beneficiary that corresponds with the petitioner's claims about the nature of the work that the beneficiary would perform in the proffered position. The AAO finds that the petitioner has failed in each of these regards.

First, the AAO notes here 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 former 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. Here the petitioner's client's representative recognized in his September 13, 2013 letter that "the minimum requirement to perform these specialized

jobs is a Bachelor's Degree in Computer Science, Engineering, technology, science, or a related field." That is to say, the petitioner's client acknowledged that the jobs it requested the petitioner to complete could be performed by an individual with a variety of degrees, including a degree of general application such as a generic "science" degree.³

Accordingly, the AAO concurs with the director's determination that the record is insufficient to establish that the duties of the proffered position comprise the duties of a specialty occupation. As recognized in *Defensor v. Meissner*, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s), as well as any hiring requirements that it may have specified, in order to properly ascertain the minimum educational requirements necessary to perform those duties. *See Defensor v. Meissner*, 201 F.3d at 387-388. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. *See id.* Here, the record is insufficient to establish that, in fact, the beneficiary would be performing services for the type of position for which the petition was filed, in this matter, a computer systems analyst position.

Although in response to the RFE the petitioner submitted a letter and itinerary for the beneficiary, expanding upon the beneficiary's responsibilities and relating the claimed responsibilities to [REDACTED] project, the record lacks corroborating documentation from [REDACTED] regarding the deliverable-based service that it requested or other documentation attesting to the actual duties the beneficiary would perform as it relates to this project. The additional documentation submitted on appeal to evidence the work [REDACTED] required also failed to include information identifying the nature of the proposed work. Accordingly, the AAO cannot discern from the nature of the proposed work, as it has not been detailed, that the work requires a bachelor's degree in a specific discipline. 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'r 1998) (citing *Matter of Treasure Craft of*

³ The requirement of a bachelor's degree in general science is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as a science degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

California, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Moreover, the end-client's acknowledgement that the work it requested of the petitioner required only a general bachelor's degree to perform the related duties, is tantamount to an admission that the position is not, in fact, a specialty occupation.

Second, the limited documentation submitted by the petitioner indicated that the project to which the beneficiary would be assigned would be delivered by April 2015, more than a year prior to the end of the requested validity period of H-1B employment. Thus, the petitioner has also failed to establish that, at the time the petition was filed, it had secured non-speculative work for the beneficiary that corresponds with its claims regarding the nature of the work it described in its submitted position description.⁴ The record does not contain evidence such as invoices, purchase orders, work orders, statements of work, and contracts which outline in sufficient detail the nature and scope of the beneficiary's intended employment with the petitioner (or any potential end-user) which would establish that the beneficiary will be employed by the petitioner in the capacity specified in the petition for the duration of the requested employment period. Thus, the petitioner has failed to establish that the petition was filed for non-speculative work for the beneficiary that existed *as of the time of the petition's filing*, for the entire period requested.

Accordingly, upon review of the totality of the record, the petitioner has not provided substantive information and supportive documentation sufficient to establish that, in fact, the beneficiary would be performing services primarily as a computer systems analyst for the duration of the requested employment period. As the petitioner in this matter has not provided documentary

⁴ The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

evidence substantiating the beneficiary's actual work, the AAO cannot conclude that the petitioner established that it would employ the beneficiary in a specialty occupation.

That is, 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 entry into 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. Thus, the petitioner has failed to establish that the proffered position is a specialty occupation under the applicable provisions.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The AAO affirms the director's determination that the petitioner has not provided a description of the actual work the beneficiary will perform for the end-client and has not established that it has sufficient H-1B work for the requested period of intended employment. For this reason, the appeal will be dismissed and the petition denied.

B. LCA Does Not Correspond to the Itinerary

Beyond the decision of the director, the petitioner on appeal submits an itinerary that shows that the beneficiary will perform work at two locations not identified on the certified LCA submitted in support of the petition. Accordingly, the petitioner has not submitted a valid LCA for all work locations and complied with the itinerary requirement at 8 C.F.R. § 214.2(h)(2)(i)(B). 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.

As noted above, the petitioner indicated on the Form I-129 that the beneficiary would be working at the end-client's offices in [REDACTED]. The certified LCA submitted *with* the Form I-129 indicates that the beneficiary will perform work in [REDACTED] or at the petitioner's office in [REDACTED]. However, on appeal, the petitioner identifies an additional two locations, in [REDACTED] as the beneficiary's assigned work addresses. Although the petitioner, in the accompanying letter submitted on appeal, asserts that it will file an amended petition if it transfers the beneficiary to either of the additional work locations, such an assertion is insufficient.

The regulation at 8 C.F.R. § 214.2(h)(2)(E) 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 location of a beneficiary's work to a geographical area not covered by the LCA filed with the Form I-129 is a material change in the terms and conditions of employment. Because work locations are critical to the petitioner's wage rate obligations, the change deprives the petition of an LCA supporting the periods of work to be performed at the two locations and certified on or before the date the instant petition was filed. The 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 (Reg. Comm'r 1978).

The petitioner's addition of two new locations for the beneficiary to perform work on appeal, alters the validity of the LCA submitted with the petition. If a petitioner's intent changes with regard to a material term and condition of employment or the beneficiary's eligibility, an amended or new petition must be filed. To allow a petition to be amended in any other way would be contrary to the regulations. Taken to the extreme, a petitioner could then simply claim to offer what is essentially speculative employment when filing the petition only to "change its intent" after the fact, either before or after the H-1B petition has been adjudicated.

For this additional reason, the petition may not be approved.

III. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition must be denied for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *see e.g., Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

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