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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



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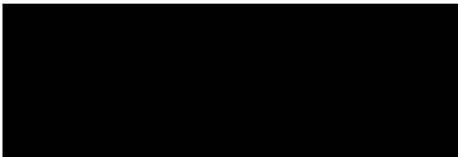
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FILE: EAC 08 151 54323 Office: VERMONT SERVICE CENTER Date: **SEP 23 2009**

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:



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).

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont 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 provides software development services, that it was established in 1999, employs 430 persons, and has an estimated gross annual income of \$39,000,000 for the 2007 year. It seeks to employ the beneficiary as a software engineer from April 28, 2008 to April 27, 2011. 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 September 8, 2008, the director denied the petition. The director referenced the beneficiary's qualifications to perform the duties of a software engineer, noting that the evaluation of the beneficiary's foreign education indicated that the beneficiary had the U.S. equivalent of a bachelor's degree in electrical engineering and not in computer science, management information systems, or information technology. Of greater importance in this matter, the director determined that the petitioner had failed to establish that the proffered position qualified as a specialty occupation.

The record includes: (1) the Form I-129 and supporting documentation filed with United States Citizenship and Immigration Services (USCIS) on April 29, 2008; (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 and documentation 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 28, 2008 letter appended to the petition that it was established to "provide software services, products, and business solutions to clients in the United States." The petitioner noted that it had offices in Newark, Delaware, Woonsocket, Rhode Island, Edison, New Jersey, and Wheeling, West Virginia and that it provided technical professional services and technical product development services to a range of industries. The petitioner noted its desire to hire the beneficiary as a software engineer and listed his responsibilities in the proffered position as: "[r]esearch, design, develop and test software/systems applications with product development and enhancements in a client/server environment using COBOL, Java, JCL, SQL and HTML on windows operations systems." The petitioner noted that specific projects might include:

Involve[ment] in production support and control activities including scheduling, maintenance, and modification of JCLs, submission and monitoring of jobs, resources, providing various stats and metrics, design[ing] and development of job streams for dependencies, resolv[ing] production abends, development and testing of complex programs in COBOL, DB2 and JCL, development of stored procedures using COBOL and DB2, design[ing] and customization of new COBOL programs using MQ Series, monitoring different queues and drain[ing] them whenever necessary using standard programs, development of test plans and schedules, implementation of test plans and project procedures;

[M]odify[ing] software designs and specialized utility programs and provid[ing] status reports to project manager; and  
[C]oordinat[ing] application development with project team under the closer supervision of project manager.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 13, 2008. In the request, among other things, the director: noted that the petitioner had provided a vague and generalized description of the beneficiary's proposed duties and asked that the petitioner clarify the beneficiary's duties; requested that the petitioner provide copies of contracts for computer consulting work that identify the company, the nature of the work to be performed, the number of consultants being supplied by the petitioner and a detailed description of the duties the petitioner's employees have performed for the clients; asked that the petitioner provide a copy of the contract for which the beneficiary will render services that identifies the nature and location of the work the beneficiary will be providing and a detailed description of the duties the beneficiary will perform; requested the entire chain of contracts that leads from the petitioner's business to the company where the beneficiary will provide services; requested a detailed statement of the beneficiary's proposed duties and responsibilities throughout a workweek; and requested that the petitioner provide documentary evidence of the nature and type of in-house projects the beneficiary would be working on, if applicable.

In an undated response to the director's RFE, counsel for the petitioner: cited unpublished decisions relating to a computer systems analyst position; noted that the petitioner required a minimum of a bachelor's degree or its equivalent and proficiency in software programming languages for the proffered position of software engineer; and also noted that every technical employee of the petitioner, regardless of position possesses a minimum of a bachelor's degree or the equivalent of a bachelor's degree. Counsel contended that the specific duties of a software engineering occupation are specialized and complex and require knowledge that can only be attained through the receipt of a bachelor's degree or the equivalent professional experience. Counsel averred that the petitioner is the beneficiary's employer and because the petitioner is not an "agent," the petitioner is not required to submit contracts with its clients to USCIS, unless a specific reason for the request is articulated. Counsel cited a 1995 memorandum issued by legacy Immigration and Naturalization Services (INS) in support of the averment. Counsel asserted that speculative employment and ability to pay issues are under the jurisdiction of the Department of Labor and should not be a part of USCIS' adjudication of an H-1B petition. Counsel concluded that according to past rulings by the AAO, the USCIS is without authority to request contracts, work orders, work agreements, federal tax returns, quarterly federal tax forms and state unemployment compensation report forms. Counsel claimed that the director's request for documentation to prove the ability to pay, that the position offered is not speculative employment and that a software engineer is a specialty occupation was inappropriately issued by USCIS.

The petitioner provided a copy of a document titled "Employment Itinerary" and noted that the beneficiary would be assigned to a software development project with the end client, Computer Science Corporation, located in Baltimore, Maryland and that as a software engineer the beneficiary would be responsible for the following:

Research, design, develop, implement, integrate and maintain mainframe client server and enhancement using COBOL, Java, JCL, SQL and HTML on Windows operating systems; Specific projects may include the following: involved in production support and control activities including scheduling, maintenance, and modification of JCLs, submission and monitoring of jobs, resources, providing various stats and metrics, design and development of job streams for dependencies, resolve production abends, development and testing of complex programs in COBOL, DB2, and JCL, development of stored procedures using COBOL and DB2, design and customization of new COBOL programs using MQ Series, monitoring different queues and drain them whenever necessary using standard programs, development of test plans and schedules, implementation of test plans and project procedures; modify software designs and specialized utility programs and provide status reports to project manager; coordinate application development with project team under the closer supervision of project manager. Environments may include COBOL, DB2, JCL, SQL, CICS, HTML, Java, MQ Series, File Aid, Java Script, VB Script, ASP, Informatica, MS-DOS, Windows and UNIX.

Design software to monitor and report statistics utilizing automatic data capture technologies and control structures; sequence, repetition, and selection, algorithms, program components, variables, constants, assignment statements, and arithmetic operators, built-in functions and random number generation, value-returning functions and program-defined functions, void functions and passing variables, pseudo code and flowcharts, Character and string manipulation, object-oriented programming and the class definition, sequential access files: writing and reading, Arrays: one and two dimensional;

Research mainframe technologies and analyze business requirements and ensure that underlying application technology meets both short-term and long-term business needs and that system designs can adapt to emerging business and technology demands;

Test and document code changes. This includes unit testing, system testing, performance testing and capacity testing;

Communicate with project managers as to the progress of open items and work with other developers, suppliers, contractors or other infrastructure resources as needed using knowledge of information systems infrastructure, systems development stages, systems development life cycle, rapid application development, systems analysis, systems design, steps in preliminary construction, steps in final construction, data modeling, process modeling, object modeling, project planning and control, economic system and project justification, evaluation of systems alternatives, web and GUI design, systems view, environmental constraints, methodology selection, preliminary investigation, project analysis, design tips, etc.

Work with the assigned development team to write and maintain software life-cycle documentation such as user guides, systems administration manuals, maintenance manuals, and other related materials

Perform and provide end-user support, systems and business analysis, documenting business processes and systems requirements, systems configuration and systems testing.

Software Development projects require multiple phase levels of design, testing and development, which are schedules to be completed through [the] office facility located at Computer Science Corporation in Baltimore, Maryland. Additional unanticipated short-term placements and/or assignments may be required for some projects. However, such placement and/or assignment are limited and [the beneficiary's] full-time work location shall remain in Baltimore, Maryland.

The petitioner provided a copy of its contract with its client, Omni Information Systems, Inc., dated June 30, 2008 which included a Purchase Order attached as Exhibit "A." The purchase order indicated the start date of the beneficiary's employment would be by May 31, 2008 for a 16 month period with possible extension and described the contracted services as "Mainframe Production Support." The petitioner also provided a copy of a contract between Omni Information Systems, Inc. and BrownIT, dated June 17, 2008 which indicated that the contract work to be performed was on the MARx Project at the Computer Science Corporation in Baltimore, Maryland. The petitioner further provided a letter on blank letterhead, dated August 5, 2008, signed by an "assistant production manager." Counsel has identified this attachment to the response as a letter from Computer Science Corporation. The assistant production manager certified that the beneficiary has been working with him on "the MARx PWS Operations project as a System Analyst as sub-contractor since April 2006 through Brown-IT, Inc. which is a prime vendor to Computer Sciences Corporation."

On September 8, 2008, the director denied the petition. As noted above, the director referenced the beneficiary's qualifications to perform the duties of a software engineer, noting that the evaluation of the beneficiary's foreign education indicated that the beneficiary had the U.S. equivalent of a bachelor degree in electrical engineering and not in computer science, management information systems, or information technology. The director denied the petition determining that the petitioner had failed to establish that the proffered position qualified as a specialty occupation.

On appeal, counsel for the petitioner asserts that the standard of review to be met by the petitioner is a preponderance of the evidence which means that the matter asserted is more likely than not to be true. Counsel contends that the director is precluded from challenging the beneficiary's qualifications for the position of software engineer as the line of inquiry was not initiated via the RFE. Counsel claims, based on a past memorandum issued by representatives of USCIS (legacy INS), that the director should not request contracts unless the adjudicating officer articulates a reason for such request. Counsel avers that the petitioner is the sole employer of the beneficiary and that the petitioner's assignment of the beneficiary's services as part of the petitioner's consulting services

does not shift the beneficiary's employment to the third party. Counsel again asserts that because it is not an agent, it is not required to submit contracts with its clients to USCIS. Counsel again references memoranda issued by USCIS (legacy INS) and unpublished AAO decisions in support of her assertion that speculative employment and ability to pay are issues that are not under USCIS jurisdiction. Counsel contends that the petitioner has established that the proffered position is a specialty occupation by providing a highly detailed itinerary that identifies the end client and outlines the beneficiary's professional job duties and by providing the chain of contracts leading to the beneficiary's employment with the third party. Counsel notes the difficulty of obtaining confirmation of the beneficiary's employment with the end user of the beneficiary's services, as the end user did not believe that it was the beneficiary's employer.

Counsel asserts that the petition was denied in error, that the petitioner has provided by a preponderance of the evidence that the position offered is *bona fide*, and that the beneficiary's assignment on a project at a third party's location is in fact a specialty occupation assignment.

Preliminarily, the AAO notes that counsel's citation to unpublished decisions is not pertinent to the matter at hand. Counsel offers no evidence to establish that the facts of the instant petition are analogous to the facts in the unpublished decisions. Moreover, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The AAO further notes counsel's conclusion that the director is precluded from challenging the beneficiary's qualifications as the director did not directly question the beneficiary's qualifications in the RFE. The AAO finds that USCIS is not required to approve applications or petitions where eligibility has not been demonstrated. In this matter, even if the director had committed a procedural error by failing to solicit further evidence on the issue of the beneficiary's qualifications it is not clear what remedy would be appropriate beyond the appeal itself. Counsel in this matter, in fact, addressed the beneficiary's qualifications on appeal.

The AAO finds that the principle issue in this matter is whether the petitioner has established that it is offering a specialty occupation position to the beneficiary. The AAO also observes that the crux of the failure to establish eligibility for this benefit is not whether the petitioner has established that it has an ongoing business with numerous clients or meets the definition of employer or agent, but it is whether the proffered position has been sufficiently described by the company that is utilizing the beneficiary's services to establish the position as a specialty occupation. In that regard, the AAO will examine the various descriptions of the proffered employment in an effort to ascertain the beneficiary's actual duties for the end client and whether those duties comprise the duties of a specialty occupation.

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. The AAO observes that the issue is whether the petitioner has established that the beneficiary's actual duties for the ultimate user of the beneficiary's services comprise the duties 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 (5<sup>th</sup> 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, contrary to counsel’s assertion, 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.

The petitioner in this matter requested the beneficiary’s services as a software engineer who will “[r]esearch, design, develop and test software/systems applications with product development and enhancements in a client/server environment using COBOL, Java, JCL, SQL and HTML on

windows operations systems.” Although the petitioner noted that the beneficiary might be involved in specific projects, the petitioner did not provide a description of the projects or substantiate that the beneficiary would be performing specialty occupation duties associated with a specific project.

In response to the director’s RFE, the petitioner included a lengthy description of proposed duties but did not provide the underlying documentation necessary to substantiate that the beneficiary would perform the claimed duties. Instead, the petitioner provided a purchase order to a contract that indicated the purchasing company, Omni Information Systems, would purchase the services of a contract employee for “Mainframe Production Support.” Such a general phrase could incorporate all types of duties, some duties that might incorporate specialty occupation duties and some duties that might not. In addition, the petitioner provided a contract between Omni Information Systems, Inc. and BrownIT, a company that had contract work to be performed on the “MARx Project” at yet another company’s (Computer Science Corporation) location in Baltimore, Maryland. The record does not include a description of the project, the number of resources dedicated to the project, or a description of the duties that the beneficiary would perform as they specifically relate to the MARx Project. In the letter identified by counsel as a letter from Computer Science Corporation, a letter that is not on company letterhead, an assistant production manager identifies the beneficiary as a systems analyst, not a software engineer, and indicates that the beneficiary is working with him on the MARx PWS Operations project. Again, the project is not defined by the end user client, Computer Science Corporation, the number of resources allocated to the project is not set out, and there is no underlying documentation that establishes the beneficiary’s duties are the specialty occupation duties of either a software engineer or a systems analyst. Without the underlying description of actual duties and further evidence of the project from the actual user of the beneficiary’s services the petitioner has not established that the proffered position is a specialty occupation. General statements of work from a third party company for work to be done for yet another company’s client is insufficient to establish that the beneficiary will perform the duties described by the petitioner. Allowing the petitioner’s description of duties to establish that the position is a specialty occupation without substantiation from the entity actually using the beneficiary’s services allows a petitioner to disguise non-specialty occupation duties as duties that appear to be the duties of a specialty occupation. 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)).

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 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.*

The petitioner does not provide the underlying statements of work that describe the projects the beneficiary will work on and the beneficiary’s actual duties as those duties relate to the specific projects. The AAO, therefore, is unable to analyze whether the beneficiary’s duties 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 position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(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)(1).

Further, as the director noted, the beneficiary’s formal foreign education was evaluated as equivalent to a U.S. baccalaureate degree in electrical engineering. The AAO has reviewed the educational requirements for a software engineer, the title of the proffered position, and observes that the Department of Labor’s *Occupational Outlook Handbook*, (*Handbook*) provides the following information regarding the education and training of software engineers:

Most employers prefer applicants who have at least a bachelor’s degree and broad knowledge of, and experience with, a variety of computer systems and technologies. The usual college major for applications software engineers is computer science or software engineering. Systems software engineers often study computer science or computer information systems. Graduate degrees are preferred for some of the more complex jobs. In 2006, about 80 percent of workers had a bachelor’s degree or higher.

The AAO also notes that the *Handbook* specifically excludes computer engineers from its discussion of the responsibilities of electronics engineers. The AAO concludes from this information that a position that could be performed by an individual with a degree unrelated to that of a software engineer is not a software engineering position. Our conclusion, along with the petitioner’s and the ultimate end user’s confusion regarding the title of the beneficiary’s occupation further diminishes the claim that the beneficiary will be performing the specialty occupation duties of a software engineer.

Finally, the AAO observes that the director requested copies of contracts that would identify the nature of the work the petitioner provides, the number of consultants being supplied by the petitioner, and a detailed description of the duties the petitioner’s employees were performing for the clients, as well as a copy of the contract for computer consulting work for the client for which the beneficiary would render services that included a detailed description of the duties the beneficiary

would perform. 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 precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). **In this matter, the petitioner failed to comply with the request.** Without a comprehensive description of the beneficiary's actual duties from the ultimate end user of the beneficiary's services and the evidence supporting such a position exists for the entire requested employment period, or other evidence to support the petitioner's claim that the proffered position is a specialty occupation, the petitioner has not established that the proffered position is a specialty occupation. The petitioner has failed to provide sufficient substantive evidence that the duties of the actual position require the theoretical and practical application of a body of highly specialized knowledge attained through a baccalaureate program in a specific discipline that relates to the proffered position. 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).

The petition will be denied and the appeal dismissed for the above stated reason. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Here, that burden has not been met.

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