

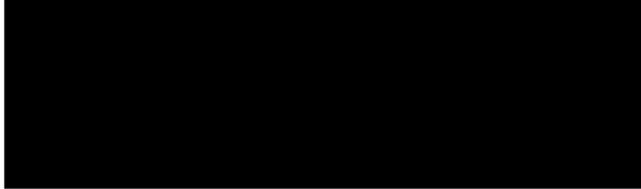
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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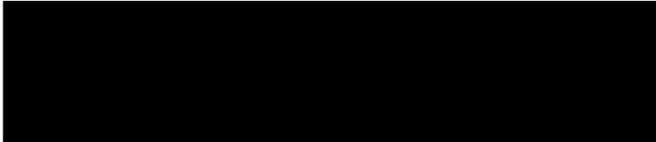
FILE: WAC 08 146 52695 Office: CALIFORNIA SERVICE CENTER Date: **APR 05 2010**

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-2903, 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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Prew
Chief, Administrative Appeals Office

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

The petitioner is a computer consulting and software development firm. To employ the beneficiary in what it designates a Systems Analyst position, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on several independent grounds, namely, her findings that the evidence of record failed to establish: (1) that the petitioner is qualified to file an H-1B petition, that is, as either (a) a United States employer as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii), or (b) a U.S. agent, in accordance with the regulation at 8 C.F.R. § 214.2(h)(2)(i)(F); (2) that the Labor Condition Application (LCA) submitted with the petition encompasses all the locations where the petitioner intended to employ the beneficiary; and (3) that proffered position is a specialty occupation.

As will be discussed below, the AAO finds that the director's determination to deny the petition for failure to establish a specialty occupation is correct. As this finding is dispositive of the appeal, the AAO will not address and therefore not disturb the director's negative determinations regarding the petitioner's filing status and the LCA.

The petitioner is a client-oriented firm whose business depends upon contracts for its Information Technology (IT) Services. This fact is reflected in the petitioner's narrative about itself in the letter of support submitted with the petition. In pertinent part, this letter states:

[The petitioner] was established in the year 2008 as an [IT] firm committed to providing expert solution[s] through multi[-]disciplinary consulting, to our client's business problems. We service a wide range of industries that includes Manufacturing, Accounting, Telecommunications, Multimedia & Broadcasting, E-commerce solutions, Consulting and Financial Brokerage[,] etc. At [this firm], we specialize in creative technology solutions for the commerce by proving a complete range of creative, cost-effective and corporate solutions for business.

The petitioner asserts that the beneficiary would serve as a Systems Analyst, from October 1, 2008 to September 18, 2011.

The letter of support includes the following comments regarding the proffered position:

The Position Offered

[The beneficiary] is offered a temporary, full-time employment position as SYSTEMS ANALYST. The primary responsibilities of this position will include the following duties:

1. Research, [d]esign, and develop computer software system applying knowledge of computer theory and dynamic programming methods[.] (40% of work time)[;]
2. Analyze software requirement to define need and feasibility of design within time and costs constrain[t]s. (40% of daily work time)[;]
3. Expand, modify, and update existing programs to enhance their capability and functionality. (Approximately 10% daily work time);
4. Evaluate interface between hardware and software systems to enhance their capability and functionality and simulation of future programs[.] (Approximately 10% of daily work time)[.]

The duties describe[d] are highly specialized and require the knowledge and training of a professional who holds a degree in [E]ngineering or Computer Science or a related field and has extensive experience in the industry.

Documents submitted with the Form I-129 also include copies of: (1) a Subcontract Agreement with [REDACTED], for the petitioner's services as a subcontractor; (2) a Subcontractor Service Agreement with Internext Corporation, also for the petitioner's services as a subcontractor; and (3) a Professional Service Teaming Agreement between System Dynamix Corporation and the petitioner, whereby the petitioner is to assign a consultant to assist System Dynamix Corporation in its consulting and program management services. These documents were submitted as samples of the petitioner's contracts with its clients. None of them relate to the beneficiary of this petition.

In its letter replying to the service center's request for additional evidence (RFE), the petitioner describes itself as a "Software development corporation which also do[es] sub contracts [sic]" and states "but we are seeking to hire [the beneficiary] for an in-house position for our Project EZ Scheduler."

The petitioner's RFE response includes a 16-page document described by its cover page as "Statement of Work (SOW) for EZ Scheduler." The AAO notes that the contents of the document indicate that this SOW relates to a "proposed web application" that "can serve the department with centralized functions like Group Scheduler, Facilities booking, Files management system and Bulletin Board." Elsewhere, the document indicates that "the department" refers to one within a firm identified as [REDACTED]. The SOW includes a Proposed Prototype section that states, by way of introduction, that "[t]he requirements will be firmed up only after further in-depth discussion with [REDACTED] (which will hereinafter be referred to as WPHC).¹

¹ The petitioner provides no information about [REDACTED] and the record of proceeding does not include any contract to which the SOW may relate.

The RFE reply letter also states that the beneficiary is required for his knowledge of:

- LAN/WAN Networking, Switches, Remote Devices, Routers, Frame Relay, ISDN, OSI model, Cisco IOS CLI, Ethernet, Network Data Flow Monitoring (Snifer Pro Ethereal), Servers, and Workstations.
- Knowledge of Cisco IOS and configuration of different routers, Access servers, switches, Cache Redirectors, and other network equipments.
- Hands-on configuration of various Linx variants based systems and configuration of different ISP servers on them[.]
- Cisco 1700, 2500, 2600, 3600, 4000, 7200 and upper Series Routers.
- Access Servers – Cisco AS5300, MAX TNT[.]
- **Juniper Routers: M40E, M7i[.]**
- Catalyst 1900, 2900, 2900-XL, 2950, 3550, and upper Series Switches.
- **Alcatel MAINSTREET 3600 MUX (for providing TDM and Frame relay connectivity).**
- Protocols: TCP/IP, DHCP, DNS, SNMP, SMTP, RIP, OSPF, IGRIP, EIGRP, and BGP[.]

(Emphasis in original.)

The AAO notes that the petitioner does not explain how development of the EZ Scheduler web application would involve the application of this range of skill sets.

The petitioner's response to the RFE also includes an "Itinerary of Servi[c]es Letter," dated July 28, 2007, which divides the beneficiary's services into the following four chronological segments:

Start Date: 10/15/2008

End Date: 05/31/2009

Location: Sterling Heights, MI

Nature of work: Will work to define the project scope with the technologies and the application development approach, develop a detail proposal/vision document giving the project scope and estimate.

Start Date: 06/02/2009
End Date: 05/31/2010
Location: Sterling Heights, MI

Nature of work: Develop use case, sequence and activity diagrams. Create and maintain SDLC and project related documentation. Replace, delete and modify codes to correct errors, analyze, review, and alter programs to increase operating efficiency.

Start Date: 06/01/2010
End Date: 03/25/2011
Location: Sterling Heights, MI

Nature of Work: Integrate multiple applications in a variety of hardware-software platforms[.] Strong design and implementation skills in an Oracle/Unix environment. Develop high performance numerical algorithms, data structures, storage and user interface design.

Start Date: 04/01/2011
End Date: 09/20/2011
Location: Sterling Heights, MI

System study, design, development, testing and implementing of IT solutions in application software and [p]erform coding, testing and performance tuning of applications. . . .

The record's descriptions of the proffered position comport with the Computer Systems Analyst occupation as generally discussed in the "Computer Systems Analysts" chapter of the Department of Labor's *Occupational Outlook Handbook (Handbook)*.² However, as will be discussed below, the *Handbook* indicates that computer systems analysts do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty closely related to computer systems analysis.

The "Nature of the Work" segment of the *Handbook's* "Computer Systems Analysts" chapter includes this information regarding the general scope of work characteristic of this occupational category:

Computer systems analysts solve computer problems and use computer technology to meet the needs of an organization. They may design and develop new computer systems by choosing and configuring hardware and software. They may also devise

² The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. All references are to the 2008-2009 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

ways to apply existing systems' resources to additional tasks. Most systems analysts work with specific types of computer systems—for example, business, accounting, or financial systems or scientific and engineering systems—that vary with the kind of organization. . . .

To begin an assignment, systems analysts consult managers and users to define the goals of the system. Analysts then design a system to meet those goals. They specify the inputs that the system will access, decide how the inputs will be processed, and format the output to meet users' needs. Analysts use techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling, and cost accounting to make sure their plans are efficient and complete. They also may prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed technology would be financially feasible.

When a system is approved, systems analysts determine what computer hardware and software will be needed to set it up. They coordinate tests and observe the initial use of the system to ensure that it performs as planned. They prepare specifications, flow charts, and process diagrams for computer programmers to follow; then they work with programmers to “debug,” or eliminate errors, from the system. . . .

In some organizations, programmer-analysts design and update the software that runs a computer. They also create custom applications tailored to their organization's tasks. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas. . . .

The information on educational requirements in the *Handbook's* “Computer Systems Analysts” chapter indicates a bachelor's or higher degree in computer science, information systems, or management information systems is a general preference, but not an occupational requirement, among employers of computer systems analysts. That this occupation accommodates a wide spectrum of educational credentials is reflected in the following paragraph that opens the “Training, Other Qualifications, and Advancement” section of the *Handbook's* “Computer Systems Analysts” chapter:

Training requirements for computer systems analysts vary depending on the job, but many employers prefer applicants who have a bachelor's degree. Relevant work experience also is very important. Advancement opportunities are good for those with the necessary skills and experience.

The AAO notes that the paragraph's statement that “many employers prefer applicant's who have a bachelor's degree” is not indicative of a pervasive requirement for a specific major or academic concentration. As such, the preference noted by the *Handbook* is not evidence that the Systems

Analyst occupational category encompasses only jobs that would qualify as specialty occupation positions. The "Education and Training" subsection of the *Handbook's* "Computer Systems Analyst" chapter further indicates that the range of educational credentials acceptable in the Systems Analysts occupation extends below the specialty occupation requirement of at least a U.S. bachelor's degree, or the equivalent, in a specific specialty:

Education and Training. When hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with graduate degrees are preferred.

The level and type of education that employers require reflects changes in technology. Employers often scramble to find workers capable of implementing the newest technologies. Workers with formal education or experience in information security, for example, are currently in demand because of the growing use of computer networks, which must be protected from threats.

For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.

Despite the preference for technical degrees, however, people who have degrees in other majors may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation.

Employers generally look for people with expertise relevant to the job. For example, systems analysts who wish to work for a bank should have some expertise in finance, and systems analysts who wish to work for a hospital should have some knowledge of health management.

Technological advances come so rapidly in the computer field that continuous study is necessary to remain competitive. Employers, hardware and software vendors, colleges and universities, and private training institutions offer continuing education to help workers attain the latest skills. Additional training may come from professional development seminars offered by professional computing societies.

The *Handbook's* "Computer Systems Analysts" chapter indicates that, while employers prefer applicants with a bachelor's degree and often seek applicants who have at least a bachelor's degree

in a technical field, their employment practices have not established a bachelor's degree in a specific specialty as the normal minimum requirement when hiring for the proffered position.

In light of the *Handbook* comments noted above, it is incumbent on the petitioner to provide sufficient evidence to establish not only that the beneficiary would perform the services of a computer systems analyst, but also that he would do so at a level requiring the theoretical and practical application of at least a bachelor's degree level of knowledge in a computer related specialty. This the petitioner has failed to do.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

As reflected in this decision's earlier discussion about the pertinent *Handbook* chapter, the evidence of record places the proffered position in the broad Computer Systems Analysts occupational category. As already discussed, the pertinent chapter of the *Handbook* indicates that systems analyst positions do not normally require at least a bachelor's degree in a specific specialty. This fact does not preclude the petitioner from establishing that its particular systems analyst position satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). However, the evidence presented by the petitioner is insufficient, as it does not establish whether the minimum credentials normally required for entry into this particular position are a bachelor's degree, or the equivalent, in specific specialty, or lesser qualifications gained by vocational training, on-the-job experience, and/or coursework at career or technical institutes, which the *Handbook's* "Computer Systems Analysts" chapter indicates as avenues for entry into the occupation.

The record of proceeding abounds with undefined and unexplained computer and information technology (IT) acronyms, technical terms, and terms of art. This technical language adds little to the petitioner's statements about the project work claimed for the beneficiary, other than to emphasize that performance of the proffered position would require application of specialized, computer-related knowledge. However, the record of proceeding does not establish that attainment of such knowledge requires at least a bachelor's degree, or its equivalent, in a specific specialty from an accredited U.S. college or university. In fact, the petitioner has not established a nexus between the proffered position and any particular level of education in a specific specialty at an accredited U.S. college or university.

The petitioner has not submitted documentary evidence that either directly assesses the educational requirements of the proffered position or provides an objective framework against which the educational requirements of the proffered position as described in the petition would be evident. Further, the petitioner has not even provided a cogent discussion of a necessary nexus between specific requirements of the proffered position and at least a baccalaureate level of coursework in a specific specialty at an accredited U.S. institution of higher learning. In short, the petitioner has

failed to provide evidence elevating its proffered systems analyst position above those systems analyst positions not requiring at least a bachelor's degree level of education in a specific specialty.

As the petitioner has not established that a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties is the normal minimum entry requirement for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position whose asserted requirement for at least a bachelor's degree in a specific specialty is common to positions in the petitioner's industry that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a specific specialty that is directly related to the specialty occupation claimed in the petition.

As reflected in this decision's earlier comments, the *Handbook's* "Computer Systems Analyst" chapter does not indicate that a systems analyst position as described in this petition would require at least a bachelor's degree in a specific specialty. Thus, the *Handbook* does not support a favorable finding under this criterion. The AAO also notes that the record does not include submissions from a professional association or from individuals or other firms in the petitioner's industry attesting to routine employment and recruiting practices.

As "[e]vidence that the degree requirement is common to the industry in parallel positions among similar organizations," the petitioner submits copies of three job advertisements posted at the Internet site *dice.com*, stating that *dice.com* "lists hundreds of positions for System[s] Analyst," and that "virtually all" of them "shows that a baccalaureate or higher degree is [a] minimum requirement for entry into this particular position." As will now be discussed, these advertisements carry little weight, and they do not support the proposition for which they were submitted.

The petitioner's comment as to the content of "virtually all" of the systems analyst positions appearing at *dice.com* has no weight, as it is not supported by evidence in the record of proceeding.

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)).

Further, no evidence of record establishes the three submitted advertisements as representative of the range of systems analyst advertisements placed elsewhere on the Internet and in other media. For this reason alone, they have little weight. Also, contrary to the petitioner's purpose for submitting them, the three job vacancy advertisements are not evidence of a common requirement for a degree in a specific specialty. Specifically, the Iknowate Technologies advertisement seeks a person with "a Bachelor's degree in healthcare or information technology, or a minimum of 2 years related work experience." The Platinum Professional Services, LLC advertisement does not specify any degree requirement. The MSX International advertisement specifies "a Bachelor of Science in Computer Science or equivalent," without indicating that degree equivalency would be determined by an objective standard that would ensure actual equivalency.

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The petitioner has not submitted evidence distinguishing the proffered position as unique from or more complex than the range of systems analyst positions for which the *Handbook* indicates that there is no requirement for a bachelor's or higher degree in a specific specialty.

Next, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), by establishing that the employer normally requires a degree or its equivalent for the position. To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position.³

³ To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The petitioner describes the proposed duties in detail and, at page 2 of the petitioner's letter of support submitted with the Form I-129, expressly asserts that these duties "are so specialized and complex that the knowledge required to competently perform [them] is associated with attainment of at least a baccalaureate degree in engineering or a related analytic or scientific discipline." However, the petitioner provides no documentary evidence to support its assertion about the educational credentials required to perform the duties it describes. This is a fatal deficiency. The *Handbook's* "Computer Systems Analysts" chapter indicates that a position's inclusion in the Computer Systems Analyst occupational category does not by itself establish the specific nature and level of education, training, or experience that may be sufficient for the duties of a particular systems analyst position. Further, the *Handbook* does not provide a framework for determining the relative specialization and complexity of a particular combination of systems analyst duties, or for determining the frequency of association between a constellation of systems analyst duties and a baccalaureate or higher degree in a specific specialty. As the petitioner has not supplemented its educational-requirement assertion with documentation substantiating it, USCIS does not have an evidentiary basis for finding that the specific duties described by the petitioner are so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 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)). Accordingly, the petitioner has also failed to satisfy the specialty occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision to deny the petition shall not be disturbed.

Aside from the evidentiary deficiencies noted above, the AAO finds that the petitioner failed to establish that the petition was filed for definite work to be performed by the beneficiary during the employment period specified in the petition. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 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. 1978). For this reason also, the appeal will be dismissed, and the petition will be denied.

could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In this matter, the petitioner bases its specialty occupation claim upon what it identifies as its in-house “EZ Scheduler” project. The project is first mentioned in the petitioner’s reply to the RFE. The petitioner’s RFE response includes a 16-page document described by its cover page as “Statement of Work (SOW) for EZ Scheduler.” The AAO notes that the contents of the SOW document indicate it relates to a “proposed web application” that “can serve the department with centralized functions like Group Scheduler, Facilities booking, Files management system and Bulletin Board.” Elsewhere, the document indicates that “the department” for which the application will be developed is within a firm identified as [REDACTED]. The SOW includes a Proposed Prototype section that is introduced by a statement by way of introduction, that “[t]he requirements will be firmed up only after further in-depth discussion with [REDACTED].”

Based upon its review of the entire record of proceedings, the AAO finds that the evidence does not indicate that, at the petition’s filing, there existed an EZ Scheduler project assignment for the beneficiary for the period specified in the petition.

First and foremost, the SOW indicates that the EZ Scheduler project is the subject of discussions with WPHC, and that the project had not advanced beyond a proposal stage. The AAO also finds that the record does not establish when, if ever, the EZ Scheduler project would generate the more than two-years of systems analyst services for which the petition was filed. Paragraph 1.1 of the SOW states, in part, “The SOW will serve as the Agreement for this engagement.” However, SOW paragraphs 2.2 and 3.1 indicate that the SOW has not yet been signed or accepted by WPHC. The pertinent statements at paragraph 2.2 (Proposed Prototype) are (1) that the prototype is can/may be changed “later once [the] agreement is signed and requirements are discussed”; and (2) that [t]he requirements will be firmed up only after further in-depth discussion with [WPHC].” Paragraph 3.1 (Proposed Schedule – Key Milestones) – the last paragraph of the record’s SOW document – ends with the phrase “Upon acceptance of this SOW.” Further, paragraph 3.1 indicates that the project has not even reached the planning stage, as it states that the proposed milestones “will be reviewed during the planning stage of the project.” The record contains no evidence that WPHC agreed to the execution of the project or any schedule of work for its completion. Accordingly, the petitioner has not established that the EZ Scheduler assignment for the beneficiary for the employment period specified in the Form I-129 was definite at the time the petition was filed. This fact is in itself a sufficient basis for denying the petition for the petitioner’s failure to establish that the petition was filed upon the basis of definite work for the beneficiary.

Further, the AAO notes several indicia in the record that, at the petition’s filing, the beneficiary had not been identified for any particular assignment.

Among the documents filed with the Form I-129 on April 14, 2008 are (1) the petitioner’s offer-of-employment letter to the beneficiary, dated February 8, 2008; (2) the petitioner’s

⁴ The record of proceeding does not include any contract to which the SOW may relate, and the petitioner provides no information about [REDACTED].

Employment Agreement with the beneficiary, signed by the petitioner and the beneficiary, respectively, on February 8, 2008 and February 15, 2008; and (3) Schedule A of the Employment Agreement, bearing the same signature dates as the agreement. None of these documents mention the EZ Scheduler project or state that the beneficiary will be assigned to an in-house project.

The petitioner's letter of support (undated), filed with the Form I-129, also fails to mention the EZ Scheduler project or any other project. Moreover, the letter's language suggests that a particular assignment for the beneficiary was yet to be determined. In this regard, the AAO notes several aspects of the letter. The language of the "Sufficient [W]ork at H-1B Level" section of the letter, and its reference to attached contracts that have nothing to do with the beneficiary⁵ are assertions that H-1B level work for the beneficiary is assured by the vitality of the petitioner's business. That section of the letter of support reads as follows:

Sufficient [W]ork at H-1B Level

[The petitioner's] [c]lient[s] [r]ange from regional to national [o]rganizations [and] include US Script, Cognizant, Systems Dynamics, Internext Corp, Custom Business Solution and EZSOL Inc. [The petitioner] [i]nteracts with hundreds of information technology partners throughout the nation. [The petitioner] has provided system development services for clients in industries as diverse as financial, manufacturing, health care, and governmental institutions.

Enclosed as Exhibit A are samples of contracts that [the petitioner] holds with its Clients. Please note that each of these contracts is strictly between [the petitioner] and its client where [the petitioner's] employees are providing H-1B level Services. [T]he petitioner is clearly delineated as the actual employer of the consultant, and is responsible for hiring, firing, payment of salary, and any related benefits owed to the employee.

The "Specialty Occupation–System Analyst" section of the letter argues for specialty occupation classification for the proffered position without mentioning any project to which the beneficiary would be assigned. Also, the next section of the support letter describes the proffered position not in

⁵ The contract documents submitted with the Form I-129 are copies of: (1) a Subcontractor Service Agreement with Internext Corporation, also for the petitioner's services as a subcontractor; (2) a Subcontract Agreement with [REDACTED], for the petitioner's services as a subcontractor; and (3) a Professional Service Teaming Agreement between [REDACTED] and the petitioner, whereby the petitioner is to assign a consultant to assist [REDACTED] in its consulting and program management services. These documents were submitted as samples of the petitioner's contracts with its clients. None of them relate to the beneficiary of this petition, and none of them involve an EZ Scheduler project.

terms of specific work to be performed for a particular project, but in terms of generalized functions which, the petitioner argues, qualify it as a specialty occupation. It is against this background of silence about any particular assignment for the beneficiary, and only in response to the RFE's request for contracts substantiating the work to which the beneficiary would be assigned, that the petitioner first mentions the EZ Scheduler project and asserts that the beneficiary will be assigned to it.

The AAO next observes several aspects of the EZ Scheduler SOW that appear inconsistent with an underlying project that, at the time of the petition's filing, allegedly assured an assignment for the beneficiary for the period specified in the petition. The SOW relates to work for WPHC. However, the petitioner has provided no contract or contract-related correspondence, memoranda, e-mail traffic, or document of any type relating to WPHC. Further, the petitioner's letter of support does not include WPHC among its list of clients; and the contract samples submitted by the petitioner with the form I-129 do not mention WPHC. In addition, the AAO finds that the SOW is not evidence that the beneficiary would in fact be involved in the EZ Scheduler project, in any capacity. The document not only does not mention the beneficiary by name, but it also fails to specify the types of workers that would be assigned to the project. It merely states that the project shall require "[a] minimum of (5) technical personnel with estimated project duration of 390 days."

The AAO also notes that the petitioner has submitted two "Itinerary of Servives [sic]" letters that are materially different. Both letters are dated July 27, 2008, are addressed to the service center's Premium Processing unit, and contain the same number of paragraphs. However, the first two paragraphs of the letter submitted on appeal describe duties materially different than those described in the first two paragraphs of the letter submitted in response to the RFE. The petitioner provides no explanation for the discrepancy. Further, the AAO notes that, while the title of the letter submitted on appeal identifies the beneficiary by name as the subject of the letter, the letter's final paragraph names a different person as the subject. These discrepancies undermine the credibility of the letters' assertions of the duties that the beneficiary would perform. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In any event, neither these letters nor any other document in the record establish that the petition was filed for an EZ Scheduler project assignment then existing for the period specified in the petition.

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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.