

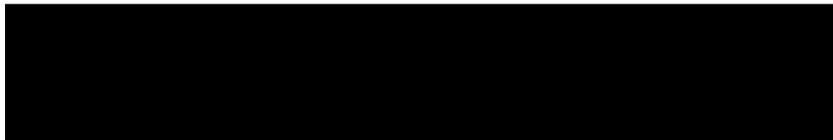
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 09 135 50098 Office: CALIFORNIA SERVICE CENTER Date: **AUG 05 2010**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the California Service Center recommended the denial of the nonimmigrant visa petition and certified her decision to the Administrative Appeals Office (AAO) for review. Upon review, the AAO will affirm the director's decision. The petition will be denied.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of programmer analyst as an H-1B nonimmigrant 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 petitioner describes itself as a computer software development and consultancy company and indicates that it currently employs over 60,000 persons worldwide, including 11,942 persons in the United States.

The director recommends denial of the petition based on the petitioner's failure to establish that: (1) the proffered position qualifies as a specialty occupation; or (2) a valid Labor Condition Application (LCA) was submitted for all work locations.

Although afforded the opportunity to submit a brief or other written statement for consideration by the AAO, to date no such documentation has been received. Therefore, the record as currently constituted will be considered complete.

The primary issue is whether the beneficiary will be employed in a specialty occupation.

It should be noted that for purposes of the H-1B adjudication, the issue of bona fide employment is viewed within the context of whether the petitioner has offered the beneficiary a position that is viewed as a specialty occupation. Of greater importance to this proceeding, therefore, is whether the petitioner has provided sufficient evidence to establish that the services to be performed by the beneficiary are those of a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

*Specialty occupation* means 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.

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), U.S. Citizenship and Immigration Services (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.

In addressing whether the proffered position is a specialty occupation, the record contains insufficient evidence as to where and for whom the beneficiary would be performing his services, and whether his services would be that of a programmer analyst.

The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that “[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation.” Moreover, the regulation at 8 C.F.R. § 214.2(h)(4)(iv)(A)(I) 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. Even absent these regulatory provisions, the regulations at 8 C.F.R. §§ 103.2(b)(8) and 214.2(h)(9)(i) provide the director broad discretionary authority to require such evidence as contracts to establish that the services to be performed by the beneficiary will be in a specialty occupation.

When filing the I-129 petition, the petitioner averred in its March 30, 2009 letter of support that it is a “leading provider of custom information technology (“IT”) design, development, integration, and maintenance services primarily for ‘Fortune 1,000’ companies.” It further claimed that approximately 100 of its customers and business technology partners are Fortune 500 companies. Regarding its business model, the petitioner stated as follows:

All of our employees work directly for [the petitioner] on projects designed and built by our company, and under the supervision of one or more [project managers for the petitioner]. Accordingly, the petitioner is not a placement company, nor an agent that arranges short-term employment.

[The petitioner’s] relationship with clients is that of independent contractor, and no other relationship exists, including employment, joint venture, or agency. [The petitioner] enters into a master service contract with its clients to set forth this contractual relationship. [The petitioner] is at all times fully responsible for the actions and omission of all its employees, whether or not such employees are working on site at a client facility.

With regard to the beneficiary’s proposed position of programmer analyst, the petitioner stated that it seeks to directly employ the beneficiary as a programmer analyst on a worksite in Milwaukee, Wisconsin. Regarding the beneficiary’s position, the petitioner stated:

As a Programmer Analyst of [the petitioner, the beneficiary] will be responsible for the delivery of assigned work, under a module lead or team lead supervision. The duties of this entry-level position include coding, testing, and debugging software and systems, and otherwise delivering customized systems applications for assigned projects. [The beneficiary] will use his practical knowledge of various software languages, tools, and platforms, and apply design specifications techniques under the supervision of an experienced team lead.

The petitioner continued by claiming that the minimum requirements for entry into the specialty occupation position of programmer analyst are a Bachelor’s degree in Computer Science, Engineering, Business, a closely related science field, or an equivalent thereof. With regard to the beneficiary, the petitioner indicated that he held a Bachelor’s degree in Electrical and Electronics Engineering , in addition to extensive training

and experience in software development, design, and implementation. The petitioner concluded by stating that it would compensate the beneficiary with an annual salary of \$51,500.

No independent documentation, such as agreements with end clients or contracts for the beneficiary to work on specific projects such as the one in Milwaukee, Wisconsin, was submitted. Noting that the petitioner was engaged in an industry that typically outsourced its personnel to client sites to work on particular projects, the director in a request for evidence (RFE) dated April 15, 2009 requested documentation such as contracts and work orders, evidence that would outline for whom the beneficiary would render services and what his duties would include at each worksite.

In a response dated May 19, 2009, the petitioner contended that it will maintain an employer-employee relationship with the beneficiary. Regarding the specialty occupation position of the beneficiary and its other employees, the petitioner claimed:

To provide consulting services to clients, [the petitioner] employs teams of professional employees who work both onsite and in-house on various parts of the project assigned to them. Both the composition of these teams and the duties of each individual team member are controlled entirely by [the petitioner]. Our unique client relationship model combines [the petitioner's] professional and specialized personnel located onsite at the customer location and offshore at dedicated development centers around the world. We have a global delivery platform that supports this onsite/offshore model.

Regarding its relationship with clients, the petitioner stated that it enters into a master service agreement with each client to set forth the terms of its contractual relationship. However, the petitioner claimed that for purposes of abiding by the terms of the confidentiality provisions in each such master service agreement, it could not produce copies of such agreements.

Finally, regarding the employment of H-1B nonimmigrant workers such as the beneficiary, the petitioner stated that at the time of admission, each employee has a single designated position at a defined worksite in the United States. It further claimed that its clients are located throughout North America and the world, and that it "frequently relocates employees within North America or transfers them elsewhere in the world depending on business and client project needs." For such employees, the petitioner claims that it will submit new LCAs to support worksite changes.

On June 5, 2009, the director recommended the denial of the petition. Specifically, the director found that despite the petitioner's claims that it will be the beneficiary's employer and that it will control and oversee the beneficiary's work, the petitioner is not the entity for whom the beneficiary will perform his duties. Based on the overview of its business model, the director concluded that the end-user utilizing the services of the beneficiary actually determines the job duties to be performed at a given worksite.

As discussed above, the director found that contractual agreements between the petitioner and its clients, in the form of service agreements, work orders, or letters from authorized officials of client companies were necessary in order to determine the exact nature of the duties the beneficiary would undertake in order to evaluate whether he would be employed in a specialty occupation position. Despite the director's specific

request for these documents, the petitioner failed to comply. Instead, despite the specific claim by the petitioner that it would frequently relocate its employees to client sites throughout the world as deemed necessary by "business and client project needs," the petitioner maintained that the beneficiary would work solely on projects designed and built by the petitioner. In addition, the petitioner justified its refusal to submit such documentation by claiming that confidentiality provisions in its master service agreements prohibited their submission.

The director concluded that, absent these agreements, it was impossible to determine:

- 1) The project the beneficiary will be assigned to;
- 2) That the duties to be performed are those of a specialty occupation; and
- 3) That specialty occupation work will be available to the beneficiary when he/she begins employment with the petitioner.

Upon review of the evidence, the AAO concurs with the director's findings. The petitioner's letter of support dated March 30, 2009 offered in support of the petition provides a generic summary of the duties of a programmer analyst. While the petitioner claims that the beneficiary will work on projects designed and developed by the petitioner, the record reflects that the petitioner generally outsources personnel to work at client sites on specific client-mandated projects.

Based on this evidence, it is clear that the beneficiary's duties could potentially vary widely based on the requirements of a client at any given time. Once again, this renders it necessary to examine the ultimate end clients of the petitioner to determine the exact nature and scope of the beneficiary's duties for each client, since it is logical to conclude that the services provided to one client may differ vastly from the services provided to another.

As discussed above, the record contains simply the letter of support and the response to the request for evidence, both of which contend that the beneficiary, as well as other employees of the petitioner, work on client projects as mandated by business or client needs. The petitioner claims that it enters into master service agreements with all of its clients; however, it refused to corroborate this claim by submitting copies of such agreements citing confidentiality provisions. 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)).

While the petitioner never specifically claimed that the evidence was privileged, the AAO notes that the petitioner originally claimed that the "information relates to confidential financial agreements between our Parent Corporation, IBM Corporation, and our business client, Kraft Foods." While a petitioner should always disclose when a submission contains confidential commercial information, the claim does not provide a blanket excuse for the petitioner's failure to provide such a document if that document is material to the requested benefit.<sup>1</sup> Although a petitioner may always refuse to submit confidential commercial information if

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<sup>1</sup> Both the Freedom of Information Act and the Trade Secrets Act provide for the protection of a petitioner's confidential business information when it is submitted to USCIS. See 5 U.S.C. § 552(b)(4), 18 U.S.C.

it is deemed too sensitive, the petitioner, as correctly noted by the director, must also satisfy its burden of proof and runs the risk of a denial by failing to provide this evidence. *Cf. Matter of Marques*, 16 I&N Dec. 314 (BIA 1977).

Despite the director's specific request, the petitioner failed to submit the requested material evidence. Any 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).

Without evidence of contracts, work orders, or statements of work describing the duties the beneficiary would perform and for whom, the petitioner fails to establish that the duties that the beneficiary would perform are those of a specialty occupation. Providing a generic job description that speculates what the beneficiary may or may not do at each worksite is insufficient. Moreover, providing such a generic job description, then contending that the beneficiary will not in fact work to design systems for clients but rather will work only on projects designed and built by the petitioner only contradicts the basic nature of the petitioner's described business operations structure. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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

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

In this matter, despite the petitioner's repeated claims that it will serve as the beneficiary's employer, it remains unclear from the record whether the petitioner will in fact be an employer or will act as an employment contractor. The job description provided by the petitioner indicates that the beneficiary will be

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§ 1905. Additionally, the petitioner may request pre-disclosure notification pursuant to Executive Order No. 12,600, "Predisclosure Notification Procedures for Confidential Commercial Information." Exec. Order No. 12,600, 1987 WL 181359 (June 23, 1987).

working on client projects and will be assigned to various clients' worksites as necessary. However, various statements by the petitioner in response to the RFE and again on appeal indicate that this is not the case, and that the beneficiary instead will work solely on projects designed and developed by the petitioner. Despite the director's specific request for documentation to establish the ultimate location(s) and position requirements of the beneficiary's employment, the petitioner failed to comply with this request prior to the adjudication of the petition. Moreover, the petitioner's failure to provide specific documentation outlining the nature of the beneficiary's employment renders it impossible to conclude for whom the beneficiary will ultimately provide services and exactly what those services would entail. The AAO, therefore, cannot analyze whether the beneficiary's duties in-house or at each worksite would require at least a baccalaureate degree or the equivalent in a specific specialty, because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for 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's 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. For this additional reason, the petition must be denied. 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii).

The petitioner has failed to establish that the beneficiary would be performing the duties of a specialty occupation. For this reason, the petitioner must be denied.

The second issue is whether the petitioner submitted a valid LCA for all work locations, as required by 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) as follows:

[E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of 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):

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

In cases where evidence related to filing eligibility is provided in response to a director's request for evidence, 8 C.F.R. § 103.2(b)(12) states:

An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed . . . .

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 the U.S. Department of Labor (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). In pertinent part, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B) also states:

The petitioner shall submit the following with an H-1B petition involving a specialty occupation: (1) A certification from the Secretary of Labor that the petitioner has filed a labor condition application . . . .

The instructions that accompany the Form I-129 also specify that an H-1B petitioner must document the filing of a labor certification application with DOL when submitting the Form I-129.

With regard to Labor Condition Applications, section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A), requires in pertinent part the following (with emphasis added):

The employer—

(i) is offering and will offer . . . nonimmigrant wages that are at least—

\* \* \*

(II) the prevailing wage level for the occupational classification *in the area of employment* . . . .

Further, the regulation at 8 C.F.R. § 214.2(h)(2)(i)(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.

Based on a review of the statutory and regulatory provisions cited above, 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 location is critical to the

petitioner's wage rate obligations, the change deprives the petition of an LCA supporting the period of work to be performed at the new location.

Moreover, while DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

(Emphasis added).

The LCA submitted with the petition lists Milwaukee, Wisconsin as the beneficiary's work location. In reviewing the petition's supporting documentation, however, the AAO finds that the actual work location(s) for the beneficiary cannot be determined with any reasonable certainty. The March 30, 2009 letter of support and the response to the RFE indicate that at a minimum, the petitioner's clients are based throughout the United States and possibly globally. For example, while the petitioner failed to disclose the names of its clients, it repeatedly states that many of its clients are Fortune 500 companies, which presumably are based throughout North America and the world.

Absent end-agreements with clients, the duration and location of work sites to which the beneficiary will be sent during the course of his employment cannot be determined. While the petitioner claimed in its May 19, 2009 response to the RFE that each H-1B nonimmigrant "has a single designated position at a defined worksite in the U.S.," it also claims that to support its clients wherever they are located, the petitioner "frequently relocates employees within North America or transfers them elsewhere in the world depending on business and client project needs." Based on this statement, even the beneficiary's claimed work location of Milwaukee, Wisconsin cannot be deemed valid without evidence demonstrating an ongoing agreement for the beneficiary's services for the entire validity period at that location.

The Form I-129 filing requirements imposed by regulation require that the petitioner submit evidence of a certified LCA at the time of filing. There is no evidence to negate a finding that the beneficiary would ultimately be outsourced to additional client sites as deemed necessary during the validity period. A 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. 1978). The petitioner failed to comply with the filing requirements at 8 C.F.R. § 214.2(h)(4)(i)(B).

Absent documentary evidence in the form of a concise itinerary, contracts, or work orders outlining the duration and scope of the beneficiary's employment in the United States, the AAO cannot conclude that the

LCA submitted is valid for all of the beneficiary's intended work locations, including even the Milwaukee, Wisconsin location. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner claims that in the event that its H-1B nonimmigrant employees are relocated to new worksites during the course of their employment, the petitioner will provide new LCAs as needed to support worksite changes. The statement, however, raises another issue for the AAO to examine; namely, whether the petitioner will comply with the terms and conditions of employment.

As noted above, a petitioner cannot simply file a petition with a certified LCA for one location, then provide a new LCA in the event that it reassigns a beneficiary to another worksite during the course of his employment. Instead, a petitioner must file an amended petition to reflect this change. It is contrary to law to permit or imply that an amended petition need not be filed if an employment location changes such that it requires or necessitates the filing of a new LCA. In any situation where a new LCA is required, an amended petition must be filed. Specifically, according to the statutory and regulatory provisions cited above, 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 location is critical to the petitioner's wage rate obligations, the change deprives the petition of a corresponding LCA supporting the period of work to be performed at the new location. USCIS policy confirms this reading of the law in stating that "[a]n amended H-1B petition must be filed in a situation where the beneficiary's place of employment changes subsequent to the approval of the petition and where the change invalidates the supporting labor condition application." See Memo. from T. Alexander Aleinikoff, Exec. Assoc. Commissioner, "Amended H-1B Petitions" (Aug. 22, 1996). This policy statement was again reiterated in the Federal Register at 63 Fed. Reg. 30419, 30420 (June 4, 1998) by reminding petitioners that they bear the responsibility "to file an amended petition . . . when the beneficiary's transfer to a new work site necessitates the filing of a new labor condition application." Absent the filing of an amended petition, USCIS cannot fulfill its regulatory duty to ensure a subsequently filed labor condition application corresponds with an H-1B petition filed on behalf of a beneficiary. See 20 C.F.R. § 655.705(b).

Based on the claims of the petitioner in its May 19, 2009 response to the RFE, it appears more likely than not that the beneficiary in this matter will be working at more than one worksite during the course of his employment. The petitioner, therefore, is advised that merely submitting a new LCA for a new work location will not suffice; an amended petition must be filed to reflect this change.

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. Accordingly, the director decision will be affirmed, and the petition will be denied.

**ORDER:** The director's decision is affirmed. The petition is denied.