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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

D2

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 02 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:

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

The petitioner is a software development company. It seeks to employ the beneficiary as a systems analyst and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the following grounds: (1) the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation; (2) the petitioner failed to file a valid Labor Condition Application (LCA) covering the locations where the services will be performed by the beneficiary; and (3) the petitioner failed to submit an itinerary.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B with counsel's brief and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In the petition submitted on May 8, 2008, the petitioner stated it has 17 employees and a gross annual income of \$1.7 million. The petitioner indicated that it wished to employ the beneficiary as a Systems Analyst from October 1, 2008 through September 17, 2011 at an annual salary of \$43,000.

The support letter states that the person in the proffered position will:

[a]nalyze computer and business problems of existing and proposed systems as well as initiate and enable specific technologies that will maximize our company's ability to deliver more efficient and effective technological and computer related solutions to our business clients. The beneficiary will gather information from users to define the exact nature of system problems and then design a system of computer programs and procedures to resolve these problems. As a Systems Analyst, the beneficiary will plan and develop new computer systems and devise ways to apply the IT industry's already existing technological resources to additional operations that will streamline our clients' business processes. This process of developing new computer systems will include the design or addition of hardware or software applications that will better harness the power and usefulness of our clients' computer systems. In this position, the beneficiary will employ a combination of techniques including, structured analysis, data modeling, information engineering, mathematical model building, sampling and cost accounting to plan systems and procedures to resolve computer problems. As part of the duties of a Systems Analyst, the beneficiary will also analyze subject-matter operations to be automated, specify the number and type of records, files, and documents to be used as well as format the output to meet user's needs. As a Systems Analyst, the beneficiary is also required to develop complete specifications and structure charts that will enable computer users to prepare required programs. Most importantly, once the systems have been instituted, the beneficiary will coordinate tests of the systems, participate in trial

runs of new and revised systems and recommend computer equipment changes to obtain more effective operations.

The petitioner describes the minimum degree requirements for the proffered position as follows:

[A]s with any Systems Analyst position, the usual minimum requirement for performance of the job duties is a bachelor's degree, or equivalent, in computers, engineering, or a related field. For a position at the level offered, it is not uncommon for the incumbent to also possess a master's degree and/or a number of years of experience of increasing responsibility in programming analysis or engineering. . . .

The Form I-129 indicates that the beneficiary will work at the petitioner's offices in Houston, TX. The submitted Labor Condition Application (LCA) was filed for a Systems Analyst to work in Houston, TX from September 18, 2008 to September 17, 2011. The LCA lists a prevailing wage of \$42,640 for Houston, TX.

The petitioner submitted the beneficiary's credentials together with a credential evaluation that states the beneficiary's education is equivalent to a U.S. Bachelor of Science in Electronics Engineering.

On September 29, 2008, the director issued an RFE stating, in part, that the evidence of record is not sufficient to demonstrate that a specialty occupation exists. The petitioner was advised to submit an itinerary of definite employment, listing the names of the employers and locations where the beneficiary would provide services, as well as copies of its contractual agreements with its clients. The petitioner was also advised to submit documentation containing a more detailed description of the in-house project on which the beneficiary would work and additional evidence that the proffered position is a specialty occupation. The director also requested evidence regarding the petitioner's business and additional evidence that the petitioner has sufficient work for the beneficiary to perform.

The petitioner responded that the beneficiary will work at the petitioner's offices in Houston, TX for the duration of employment. The petitioner included the following documents, in pertinent part:

- Employment Agreement between the petitioner and beneficiary for the beneficiary to work as a Systems Analyst. This Agreement, signed by both parties, states that the beneficiary will "[a]nalyze computer and business problems of existing and proposed systems as well as initiate and enable specific technologies that will maximize our company's ability to deliver more efficient and effective technological and computer related solutions to our business clients. Employee shall also perform such other duties as are customarily performed by other persons in similar such positions, as well as such other duties as may be assigned from time to time by the Employer." The Agreement also states, "[e]mployee agrees that their duties shall be primarily rendered at Employer's business premises or at such other places as the Employer shall in good faith require. . . .";
- A copy of a Contractor Agreement between the petitioner and a company called RAC Infotech, which is located in Houston, TX. This contract states that RAC Infotech may retain the petitioner on a subcontract basis to provide services "to one or more of RAC's clients" This Agreement was signed on March 12, 2008 and is valid for one year from this date.
- A copy of a Work Order signed by the petitioner and RAC Infotech, which states that the beneficiary will

work in Houston, TX for 26 months.

- A copy of a letter from RAC Infotech, dated November 8, 2008, which states that the beneficiary will be assigned to work on a project for Shell pursuant to RAC Infotech's agreement with the petitioner. The letter states that the beneficiary will analyze business requirements, coordinate with teams, and develop and design applications, but no information is provided regarding the specific project for Shell. The petitioner did not submit copies of any documentation from Shell or any contracts the petitioner or RAC Infotech has with Shell.
- Copies of sample contracts between the petitioner and its clients. These contracts pertain to other workers assigned by the petitioner as contractors, but do not pertain to the beneficiary;
- Copies of Forms W-2 for the petitioner's employees, which indicate that most workers live outside the Houston, TX metropolitan area, although a few live in the Houston, TX metropolitan area; and
- The petitioner's lease and photos of the petitioner's offices.

The director denied the petition on February 2, 2009.

On appeal, the petitioner maintains that the beneficiary will be working internally on the project for Shell and will not be contracted out to client sites. Therefore, the petitioner argues that an itinerary is not required and that the LCA is valid as it covers the petitioner's office in Houston, TX. The petitioner also argues that the proffered position as previously described is a specialty occupation. With the appeal, the petitioner has submitted copies of advertisements from other companies and an itinerary stating that the beneficiary will work at the petitioner's offices on a project for Shell for approximately three years.

The AAO will first consider whether the proffered position is 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary and sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), 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.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry’s professional association has made a degree in a specific specialty 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)).

Upon review, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The *Handbook's* section (2010-11 online edition) on Computer Systems Analysts states as follows:

Nearly all organizations rely on computer and information technology (IT) to conduct business and operate efficiently. Computer systems analysts use IT tools to help enterprises of all sizes achieve their goals. They may design and develop new computer systems by choosing and configuring hardware and software, or they may devise ways to apply existing systems' resources to additional tasks.

Most systems analysts work with specific types of computer systems—for example, business, accounting, and financial systems or scientific and engineering systems—that vary with the kind of organization. Analysts who specialize in helping an organization select the proper system hardware and software are often called system architects or system designers. Analysts who specialize in developing and fine-tuning systems often have the more general title of systems analysts.

To begin an assignment, systems analysts consult with an organization's managers and users to define the goals of the system and 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 a variety of accounting principles to ensure 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 oversee the implementation of the required hardware and software components. 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. Systems analysts who do more in-depth testing may be called software quality assurance analysts. In addition to running tests, these workers diagnose problems, recommend solutions, and determine whether program requirements have been met. After the system has been implemented, tested, and debugged, computer systems analysts may train its users and write instruction manuals. . . .

[W]hen 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. 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 areas 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. . . .

Therefore, the *Handbook's* information on educational requirements in the computer systems analyst occupation indicates that a bachelor's or higher degree, or the equivalent, in a specific specialty is not a normal minimum entry requirement for this occupational category. Rather, the occupation accommodates a wide spectrum of educational credentials.

As evident above, the information in the *Handbook* does not indicate that computer systems analyst positions normally require at least a bachelor's degree in a specific specialty. While the *Handbook* states that employers often seek individuals with at least a bachelor's degree level of education in a specific specialty for particular positions, this merely indicates a preference for a certain degree, not a normal minimum requirement. Moreover, the evidence of record on the particular position here proffered does not demonstrate requirements for the theoretical and practical application of such a level of highly specialized computer-related knowledge.

The record's descriptions of the petitioner's duties, which are vague and generic and do not reference the specific project to which the beneficiary would allegedly be assigned, do not elevate the proffered position above that of a computer systems analyst for which no particular educational requirements are demonstrated. The AAO rejects as unsubstantiated the petitioner's declaration that the proffered position requires an individual with a bachelor's degree in computers, engineering, or a related field. Moreover, the petitioner's minimum requirements do not refute the *Handbook's* description that a wide spectrum of fields are acceptable for computer systems analysts, which means that the proffered position does not require at least a bachelor's degree or equivalent in a specific specialty. Additionally, as the petitioner did not submit a copy of any contracts or other documentation from Shell regarding the project on which the beneficiary would allegedly work, the AAO cannot determine whether the beneficiary's duties actually will be those of a computer systems analyst, let alone whether the duties are more complex than a computer systems analyst for which no particular educational requirements are indicated.

Counsel states on appeal that the job description and other documentation provided as well as the section regarding Computer Systems Analysts in Occupational Information Network *O*Net On-line* Summary Report

(*O*Net On-line*) is sufficient to demonstrate that the proffered position is a specialty occupation. On June 23, 2010, the AAO accessed the pertinent section of the *O*Net Online* Internet site, which addresses Computer Systems Analysts under the Department of Labor's Standard Occupational Classification code of 15-1051.00. That site is <http://online.onetcenter.org/link/summary/15-1051.00>. Contrary to counsel's assertion, *O*Net Online* does not state a requirement for a bachelor's degree for Computer Systems Analysts. Rather, it assigns Computer Systems Analysts a Job Zone Four rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the *O*Net Online* does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *O*Net Online* information is not probative of the proffered position being a specialty occupation.

As the evidence of record does not indicate that this petition's particular position is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty, 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). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (a) parallel to the proffered position and (b) located in organizations that are similar to the petitioner.

Again, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a *specific specialty*. The advertisements submitted by the petitioner on appeal for Systems Analysts further support the *Handbook's* report that a wide variety of degrees are acceptable as one of the advertisements lists a bachelor's degree in Computer Science, Business Administration or the equivalent as a minimum requirement, another lists a bachelor's degree in Computer Science, Information Technology, or a related field, and two others list a bachelor's degree requirement without indicating that the degree must be in a specific specialty. Therefore, the advertisements do not demonstrate that other IT companies require at least a bachelor's degree in a *specific specialty* for Systems Analysts.

The petitioner also failed to satisfy 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 evidence of record does not develop relative complexity or uniqueness as an aspect of the position.

Next, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in

a specific specialty. In response to the RFE, the petitioner provided a list of its workers and their degrees, three of which are Master of Science degrees, one of which is a Bachelor of Science Degree without a specific field listed, two of which are Master of Computer Applications degrees, one of which does not appear to have a Bachelor's or Master's degree, one of which is a Master of Engineering, two of which are Masters of Business Administration degrees, and four of which are Bachelor of Engineering degrees. Therefore, the petitioner has not demonstrated that it normally employs only Systems Analysts with at least a bachelor's degree or the equivalent in a specific specialty, or even at least a bachelor's degree in computers, engineering, or a related field as the petitioner stated as a minimum requirement for its Systems Analyst positions in its support letter.

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 evidence of record indicates no specialization and complexity beyond that of a computer systems analyst, and as reflected in this decision's discussion of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the *Handbook* does not indicate that the attainment of at least a bachelor's degree in a specific specialty is usually associated with computer systems analysts in general.

For the reasons discussed above, the AAO finds that the petitioner has not established that the proffered position qualifies as a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO therefore affirms the director's finding that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation and denies the petition for this reason.

Next, the AAO will review whether the petitioner failed to file a valid LCA covering the locations where the services will be performed by the beneficiary.

In pertinent part, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B) 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 regulation at 8 C.F.R. § 103.2(b)(1) states, in pertinent part:

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.

In addition, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1), states, as part of the general requirements for petitions involving a specialty occupation, that:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

Further, the regulation at 8 C.F.R. § 214.2(h)(2)(E), which states:

Amended or new petition. The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H-1C, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination. In the case of an H-1B petition, this requirement includes a new labor condition application.

It is self-evident that a change in the location of a beneficiary's work to a geographical area not covered by the LCA filed with the Form I-129 is a material change in the terms and conditions of employment. Because work 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 and Form I-129 in this matter, which indicate the proffered position's location as being in Houston, TX for the duration of the petition, does not correspond with the Employment Agreement provided by the petitioner, which states that the beneficiary will work either at the petitioner's offices or at other places as the petitioner "shall" require, or the Contractor Agreement, which retains the petitioner to provide subcontractor services to one "or more" third party clients. Additionally, based on the Forms W-2 submitted by the petitioner, it appears that a number of its employees live outside of the Houston, TX metropolitan area. Moreover, the petitioner did not submit any documentation from Shell confirming that the beneficiary would work on its project at the petitioner's offices for the duration of the petition. 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 light of the fact that the record of proceeding indicates that the beneficiary will likely work at locations not identified in the Form I-129 and the LCA filed with it, USCIS cannot ascertain that this LCA actually supports and corresponds to the H-1B petition. 8 C.F.R. § 103.2(b)(1). As discussed above, a petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Therefore, the director's conclusion that the petitioner failed to establish that the LCA corresponds to the petition by encompassing all of the work locations and related wage requirements for the beneficiary's full employment period is affirmed.

Finally, the AAO will examine whether the petitioner was required to submit an itinerary. 8 C.F.R. § 214.2(h)(2)(i)(B) states, in pertinent part:

Service or training in more than one location. A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.

The language of the regulation, which appears under the subheading "Filing of petitions" and uses the mandatory "must," indicates that an itinerary is material and required initial evidence for a petition involving employment at multiple locations, and that such a petition may not be approved for any employment for which there is not submitted, at the time of the petition's filing, at least the employment dates and locations.

As discussed previously, the Employment Agreement, Contractor Agreement, and the Forms W-2 submitted by the petitioner all indicate that it is likely that the beneficiary would be assigned to more than one worksite throughout the duration of the petition. For the first time on appeal, counsel provides an itinerary stating that the beneficiary will work at the petitioner's offices for three years. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

Moreover, the itinerary provided on appeal conflicts with evidence previously provided that indicates it is likely that the petitioner will assign the beneficiary to work at other locations besides the petitioner's offices. 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). The AAO therefore affirms the director's finding that the petitioner failed to submit an itinerary as required under 8 C.F.R. § 214.2(h)(2)(i)(B) and denies the petition on this additional ground.

The appeal will be dismissed and the petition denied. 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.