

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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



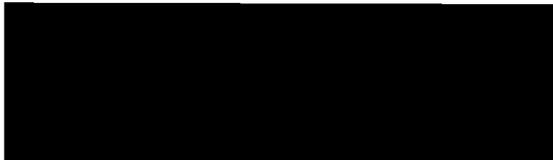
82

FILE:  Office: VERMONT SERVICE CENTER Date: JUN 03 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:

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner describes itself as a corporation that specializes in providing information technology (IT) services to clients in various industries. To employ the beneficiary in a position that it designates as Programmer Analyst, 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 three independent grounds, namely, his findings that the evidence of record failed to (1) establish that the proffered position is a specialty occupation; (2) provide the itinerary that the regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) requires when a proffered H-1B position is to be performed at more than one location; and (3) establish that the Labor Condition Application (LCA) filed with the petition corresponds to the petition.

The AAO will first outline salient facts in the record that relate to the director's grounds for denying the petition.

At the outset, the AAO notes that the record of proceeding reflects that, although the petitioner acknowledges that it is a "start-up" company with no more than three current employees, the petitioner filed 28 other H-1B petitions with the present petition, and all for the same type of position – Programmer Analyst.

In its March 17, 2009 letter of support filed with the Form I-129, the petitioner states that it currently conducts business in two main IT areas, namely: (1) development of products that will increase the petitioner's line of services to its clients; and (2) client projects. However, as will be discussed below, the record of proceeding contains no evidence of any specific project to which the beneficiary would be assigned in these or any other area.

In its letter of reply to the director's request for additional evidence (RFE), the petitioner states that the petitioner will provide the beneficiary work from two general "sources," namely (1) its own "direct customers" which directly utilize the services of its IT professionals, and (2) "intermediary customers," that is, other IT-service providers who draw upon the petitioner to supply them with IT workers for their contracts with end-user clients.

In its letter replying to the RFE, the petitioner also states that, due to the realities of the IT staffing and consulting business in which it is engaged, the petitioner is unable to provide the itinerary evidence requested by the RFE. As will be reflected in this decision, such circumstances do not relieve the petitioner of its regulatory obligations to provide, at the time of petition filing, an itinerary of the beneficiary's employment, as that term is defined at 8 C.F.R. § 214.2(h)(2)(i)(B), and to establish the specialty occupation of the proffered position by evidence of definite,

non-speculative work that, by the date of the petition's filing, has been identified for the beneficiary to perform during the period specified in the petition.

The petitioner submitted a number of documents as evidence that it has secured sufficient clients to ensure that the beneficiary will be employed in accordance with the petition.<sup>1</sup> As reflected in the discussion below, none of those documents establishes any definite assignment, project, or substantive work of any kind that had been designated for the beneficiary at the time the petition was filed.

With the Form I-129, the petitioner filed two documents "by way of example" of companies with which the petitioner has current contracts, namely: (1) a Supplier Agreement with [REDACTED] Staffing Solutions (ERSS), effective March 11, 2009, that contains terms and conditions governing any Purchase Order (P.O.) whereby the petitioner agrees to refer its "technical services personnel" to ERSS for ERSS to refer to its clients for their temporary needs for "technical services personnel"; and (2) a Subcontractor Agreement with [REDACTED] dated March 2, 2009, that specifies terms and conditions governing any Task Order (T.O.) under which the petitioner is to perform services for MWCL or MCWL's clients. The AAO notes that the petitioner submitted neither a P.O. nor a T.O. to which the agreements would apply, and that the record of proceeding contains no documents establishing the substantive nature and the educational requirements of any work provided or to be provided under either the ERSS or the MWCL agreement.

The petitioner's initial filing also included a Novartis Supplier/Contractor Classification Form listing the petitioner as a Minority Owned Business Enterprise and Small Disadvantaged Business, which, at most, indicates that the petitioner filed this form with the form's issuer, Novartis Pharmaceuticals Corporation (NPC). The form does not indicate any particular transaction to which it may relate.

As part of its reply to the RFE, the petitioner submitted what it describes as its contracts with NPC; Vega Consulting Solutions, Inc. (VCS); and MWCL.

The NPC documents consist of (1) the earlier submitted NPC Supplier/Contractor Classification Form, together with a document entitled [REDACTED] which reflects that NPC contracted for the petitioner to provide a named employee for "St [sic] Tech Systems Support" commencing on February 16, 2009, for a price of \$15,450, and (2) two pages of "Terms and Conditions" to apply to any P.O. from NPC. The Order does not relate to the beneficiary. Further, neither these NPC documents nor any other evidence of record establishes the substantive nature and the educational requirements of work required under [REDACTED]. In this regard, the AAO observes that the record of proceeding contains no description of the "St Tech Systems Support" work and no explanation of the educational and/or training credentials required by that work.

---

<sup>1</sup> Because the petitioner has not established their relevance to the issues on appeal, the AAO will not consider any of the documentation that the petitioner has submitted with regard to [REDACTED] which the petitioner describes as a sister company.

The VCS documents consist of (1) a copy of the petitioner's March 18, 2009 agreement with VCS, a firm "in the business of locating temporary personnel with information technology skills for various clients," which will allow the petitioner, as "an independent contractor," to "introduce personnel candidates to [VCS] in order that [VCS] may propose the services of such personnel" to client(s) of VCS "under various [c]lient agreements"; and (2) a Work Order between VCS and the petitioner, accepted by the petitioner on March 26, 2009, for the services of a named employee of the petitioner as a "Sr. Programmer/Analyst" at Horizon Blue Cross/Blue Shield on a project starting March 30, 2009. The AAO notes that, as the Work Order does not provide either the rate to be paid to the petitioner, or the project end date, it does not appear to qualify as an example of an authentic contractual obligation between VCS and the petitioner.<sup>2</sup> Further, the description of the duties to be performed is only a generalized statement of generic functions that does not relate substantive details of any work to be performed for the end-client, Horizon Blue Cross/Blue Shield.

The MWCL document, a March 2, 2009 Subcontractor Agreement with the petitioner, indicates that, as the need may arise, MWCL will contract for the petitioner's services by issuing to the petitioner individual T.O.'s for specific services to be delivered to MCWIL or its client(s), which will become effective upon the petitioner's written acceptance. This Subcontractor Agreement states, in part, that a T.O. "will indicate the tasks or services to be performed by [the petitioner], including [the] date on which [the] assignment is to begin, estimated ending dates, and the per hour rates to be paid to [the petitioner] by [MWCL]." The record does not include any T.O. from MCWL, and thus, does not establish the nature of any work to be performed in accordance with the Subcontractor Agreement.

Alluding to the March 2, 2009 MWCL agreement as one under which the petitioner will provide "specialist talent and hard-to-locate resources on an as-needed project basis," a May 21, 2009 letter from MCWL's Managing Director confirms that the petitioner "will continue to provide resources per the terms of the agreement into the foreseeable future" and states that most of the jobs for which MCIL will draw workers from the petitioner "requires a consultant with a computer-related bachelor's degree plus several year's of experience." The AAO accords no probative weight to this letter as it is not accompanied by documentary evidence of any contract, T.O., or other contractual document relating to the petitioner's services in the past or requiring those services in the future. Further, as such documents do not exist in the record, there is no basis for the AAO to determine the educational credentials that actually have been or would be required for any project for which the petitioner would supply workers to MCWL. 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)).

---

<sup>2</sup> The VCS Agreement with the petitioner expressly states that VCS will commit itself contractually only by a P.O., which includes, among other items, "the term" (i.e., the length of the commitment) and "the negotiated labor rates." The Work Order submitted by the petitioner contains neither of these material items.

The RFE reply also includes June 9, 2009 e-mail correspondence between the petitioner and New York Securities LLC (NYSL) regarding their shared interest in scheduling a meeting to discuss the possibility of NYSL contracting with the petitioner to staff one of its projects. The AAO notes that the subject of the e-mails is a Senior Software Engineer position, not a Programmer Analyst position, which is the type for which the present petition is filed. Further, the e-mails are not evidence of any contractual commitment between the petitioner and NYSL.

As reflected in the above survey of the documents submitted as evidence that the petitioner's clients would provide sufficient work for the beneficiary, those documents fail to establish any specific projects to which they relate, the substantive nature of any such project, the educational requirements for such work, and, consequently, whether those documents relate to any specialty occupation work. Further, the record is devoid of documentary evidence of any contract or commitment from any client for the beneficiary's services during the employment period specified in the petition.

The critical aspects of the record of proceeding with regard to the itinerary issue are that (1) the record reflects that the petitioner intends to assign the beneficiary to any location where its clients may require the beneficiary's services; (2) the record does not document any firm's contractual obligation to use the beneficiary's services at any specific time or for any specific project or projects during the period designated in the petition; (3) the petitioner acknowledges that it does not know where and when the beneficiary would perform as a programmer analyst; and (4) therefore the petitioner has not complied with the itinerary requirement at 8 C.F.R. § 214.2(h)(2)(i)(B).

With regard to the LCA issue, the AAO notes that, while the Form I-129 and the LCA indicate Princeton, NJ as the location where the beneficiary would work, the petitioner provided no documentary evidence of any work reserved for the beneficiary at that location. Further, the petitioner's letter in response to the RFE and the MCWL letter of May 21, 2009, with its listing of potential clients for which MCWL may draw personnel from the petitioner, indicate that the beneficiary would be subject to assignments at as yet undesignated locations outside the Princeton, New Jersey location specified on the LCA.

### **The Specialty Occupation Issue**

The AAO hereby endorses the director's analysis of the specialty occupation as written, finding that it accurately assesses the evidence of record and comports with the statutes and USCIS regulations governing the specialty occupation aspect of the H-1B program. Accordingly the AAO fully affirms the director's determination with regard to the specialty occupation issue.<sup>3</sup>

---

<sup>3</sup> The AAO notes, however, that the director is incorrect if he meant to convey that Programmer Analyst positions categorically qualify as a specialty occupation. The information on educational requirements in the "Computer Systems Analysts" chapter of the 2010-2011 edition of DOL's *Occupational Outlook Handbook* indicates that 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 Programmer Analysts, whom the *Handbook* identifies as a subcategory of the Computer Systems Analyst occupation. That the Programmer Analyst occupational category accommodates a wide spectrum of

As reflected in the director's discussion of the specialty occupation issue, by failing to document the projects to which the beneficiary would be assigned, their substantive nature, and the educational requirements for their performance, the petitioner has also necessarily failed to establish that the beneficiary would be assigned work requiring the theoretical and practical application of at least a U.S. bachelor's degree level of highly specialized knowledge in a particular IT-related specialty, as required by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and the implementing regulations at 8 C.F.R. § 214.2(h).

Further, a position may be awarded H-1B classification only on the basis of evidence of record establishing that, at the time of the petition's filing, definite, non-speculative work would exist for the beneficiary for the period of employment specified in the Form I-129. The record of proceeding does not contain such evidence. 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 based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

### **The Itinerary Issue**

The regulation at 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.

On appeal, the petitioner contends that the director's denial of this petition for failure to provide an itinerary as that term is defined at 8 C.F.R. § 214.2(h)(2)(i)(B) must be overturned, and the petition approved, because the petitioner has provided sufficient documentary evidence to satisfy the regulation's itinerary requirement as addressed in a document issued by the Office of Adjudications of the legacy Immigration and Naturalization Service (INS), namely: a memorandum from [REDACTED]

[REDACTED] INS Office of Adjudications, *Interpretation of the Term "Itinerary" Found in 8 C.F.R. 214.2(h)(2)(i)(B) as it Relates to the H-1B Nonimmigrant*

---

educational credentials is especially reflected in the "Training, Other Qualifications, and Advancement" section of the *Handbook's* "Computer Systems Analysts" chapter.

*Classification*, HQ 70/6.2.8 (December 29, 1995) (hereinafter referred to as the Aytes memo).<sup>4</sup> At Part 3 of the Form I-290B, the petitioner states, in pertinent part:<sup>5</sup>

[W]e have provided clear evidence that [the petitioner] has direct clients which utilize our professional services as well as with third parties who in turn have contracts with end clients seeking our company to provide employees to work on their respective projects. Despite the lack of a specific itinerary, the approval of the petition would be consistent with [the Aytes memo] defining "itinerary" as it relates to H-1B visa petitions. It states "in the case of an H-1B petition filed by an employment contractor, a general statement of the alien's proposed or possible employment is acceptable since the regulation does not require that the employer provide the Service with the exact dates and places of employment. As long as the Officer is convinced of the bona fides of the petitioner's intentions with respect to the alien's employment, the itinerary requirement has been met. The itinerary does not have to be so specific as to list each and every day of the alien's employment in the United States." Thus, based on the [MCWL letter] seeking the services of our employees as well as our contract with our direct client, [NPC][,] seeking our employees to work on [IT] projects in their offices, we have provided sufficient evidence of an "itinerary" for this petition to be approved.

The AAO will now discuss several reasons why the petitioner errs in arguing that the director's determination to deny the petition for lack of an itinerary is incorrect.

*The Aytes memo does not override the regulation:*

The itinerary language at 8 C.F.R. § 214.2(h)(2)(i)(B) of the regulation, with its use of the mandatory "must" and its inclusion in the subsection "Filing of petitions," establishes that the itinerary as there defined is a material and necessary document for an H-1B petition involving employment at multiple locations, and that such a petition may not be approved for any employment period for which there is not submitted at least the employment dates and locations. Neither the MCWL nor the NPC documents relied upon by the petitioner specify any dates for employment of the beneficiary or indicate definite H-1B employment for the beneficiary for any portion of the period specified in the petition. Therefore, the director was correct in his determination to deny the petition for failure to provide the itinerary required by 8 C.F.R. § 214.2(h)(2)(i)(B).

The petitioner errs to the extent that it argues that the language of the Aytes memo supersedes the clear language at 8 C.F.R. § 214.2(h)(2)(i)(B) mandating an itinerary consisting of at least "dates and locations of the [beneficiary's] services or training." An agency guidance document, such as the

---

<sup>4</sup> Prior to the director's decision, the petitioner submitted a copy of memo that appeared on the Internet site of the American Immigration Lawyers Association (AILA).

<sup>5</sup> No brief is submitted on appeal. The petitioner states the grounds of the appeal at Part 3 of the Form I-290B.

Aytes memo, does not have the force and effect to preempt or countermand the clear mandate of an agency regulation, such as the one at 8 C.F.R. § 214.2(h)(2)(i)(B), that has been properly promulgated, after opportunity for public comment, in accordance with the Administrative Procedures Act (APA). Further, the AAO notes that the Aytes memo has no precedential value and, therefore, no binding effect as a matter of law upon USCIS. See 8 C.F.R. § 103.3(c) (types of decisions that are precedent decisions binding on all USCIS officers). Courts have consistently supported this position. See *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (holding that legacy Immigration and Naturalization Serviced (INS) memoranda merely articulate internal guidelines for the agency's personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely"); see also *Noel v. Chapman*, 508 F.2d 1023 (2nd Cir. 1975) (finding that policy memoranda to legacy INS district directors regarding voluntary extended departure determinations to be "general statements of policy"); *Prokopenko v. Ashcroft*, 372 F.3d 941, 944 (8th Cir. 2004) (describing a legacy INS Operating Policies and Procedures Memorandum (OPPM) as an "internal agency memorandum," "doubtful" of conferring substantive legal benefits upon aliens or binding the INS); *Romeiro de Silva v. Smith*, 773 F.2d 1021, 1025 (9th Cir. 1985) (describing an INS Operations Instruction (OI) as an "internal directive not having the force and effect of law").

*The Aytes memo does not proscribe the actions taken by the director with regard to this petition:*

Aside from the fact that the Aytes memo does not have the authoritative status to override the regulatory mandate for an itinerary as described at 8 C.F.R. § 214.2(h)(2)(i)(B), the Aytes memo does not mandate USCIS officers to forgo the requirement for an itinerary as defined in the regulation as at least "the dates and locations of the services or training" that the beneficiary is to perform. Rather, the Aytes memo qualifies its guidance as being subject to the exercise of the adjudicating officer's discretion. This is evident in the memo's statements that the itinerary requirement has been met "[a]s long as the officer is convinced of the bona fides of the petitioner's intentions with respect to the alien's employment," and that "[s]ervice officers are encouraged to use discretion in determining whether the petitioner has met the burden of establishing that it has an actual employment opportunity for the alien." As such, the Aytes memo does not mandate that the director in this matter, or any USCIS officer, suspend, dispose with, or accept any substitute for the itinerary minimum (i.e., dates and locations) mandated at 8 C.F.R. § 214.2(h)(2)(i)(B). Accordingly, the director's seeking itinerary information, and later denying the petition for the lack of that information, did not violate any aspect of the Aytes memo.<sup>6</sup>

*Additionally, the director had authority beyond and independent of 8 C.F.R. § 214.2(h)(2)(i)(B) to request and consider itinerary evidence:*

---

<sup>6</sup> In reaching this conclusion, the AAO obviously rejects the MCWL and the NPC documents as evidence of any commitment by these firms to definitely employ the beneficiary at any time within the period of intended employment specified in the Form I-129.

Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, 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 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 and itineraries to establish that the services to be performed by the beneficiary will be in a specialty occupation during the entire period requested in the petition. A service center director may issue an RFE for evidence that he or she may independently require to assist in adjudicating an H-1B petition, and his or her decision to approve a petition must be based upon consideration of all of the evidence as submitted by the petitioner, both initially and in response to any RFE that the director may issue. *See* 8 C.F.R. § 214.2(h)(9). The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), (b)(8), and (b)(12).

The AAO finds that, in the context of the record of proceedings as it existed at the time the RFE was issued, the RFE request for itinerary evidence was appropriate under the above cited regulations, not only on the basis that it was required initial evidence, but also on the basis that it addressed the petitioner’s failure to submit documentary evidence substantiating the petitioner’s claim that it had H-1B caliber work for the beneficiary for the period of employment requested in the petition. Further, as discussed in this decision’s sections on the specialty occupation and LCA issues, the petitioner’s failure to provide the itinerary evidence requested in the RFE, and the petitioner’s admission that it possessed no such evidence, required the director to deny the petition.

For all of the reasons discussed above, the AAO affirms the director’s denial of the petition on the grounds of the petitioner’s failure to provide the itinerary evidence sought in the RFE.

### **The LCA Issue**

The director determined that the petitioner failed to provide an LCA valid for this petition, that is, an LCA that “cover[s] the location where the services are to be performed by the beneficiary.” The director’s decision states, in pertinent part:

[B]ecause the intention of this petition appears to be employing the beneficiary at a[n] end client site(s), it is not known where, when, or for whom the beneficiary would actually perform their [sic] duties. Therefore, you have not satisfied the requirement per 8 C.F.R. § 214.2(h)(4)(i)(B)(1) in obtaining a certification from DOL [the Department of Labor] before filing for the H-1B classification.

As will now be discussed, the AAO finds that the director did not err in denying the petition on the LCA issue.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) states that, when filing an H-1B petition, the petitioner must submit with the petition “[a] certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary.” Thus, in order for a petition to be approvable, the LCA must have been certified before the H-1B petition was filed. The submission of an LCA certified subsequent to the filing of the petition satisfies neither 8 C.F.R. § 214.2(h)(4)(i)(B)(1) nor 8 C.F.R. § 214.2(h)(4)(iii)(B)(1). 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).

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine 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. . . .*

(Italics added.)

It should be noted that a petition consists of all of the documents submitted with it, and that its content with regard to any particular issue consists not just of entries on the Form I-129 but also of all relevant information within the four corners of the record of proceeding. Therefore, the extent to which the terms of an LCA conform to the terms of an H-1B petition depends upon the totality of relevant information provided within the record of proceeding.

The record of proceeding in the present matter indicates that actual work locations for performance of the beneficiary’s services would be determined by whatever contractual documents specify them, but no such documents were submitted. This fact combined with (1) the petitioner’s letter in response to the RFE, with its acknowledgement that the petitioner does not know where exactly the beneficiary will be working; and (2) the MCWL letter of May 21, 2009, with its listing of potential

clients for which MCWL may draw personnel from the petitioner, indicate that the beneficiary would be subject to assignments at as yet undesignated locations outside the Princeton, New Jersey location specified on the LCA. Accordingly, the director was correct in determining that the one location specified in the LCA does not encompass all of the locations where the beneficiary would be assigned to work. Accordingly, the petitioner has not established that the petition is supported by a corresponding LCA. For this reason also, the appeal must be dismissed and the petition denied.

Additionally, the appeal must be dismissed for failing to address the director's separate determinations to deny the petition for its failures to establish the proffered position as a specialty occupation and to be supported by an LCA corresponding to the locations where the beneficiary would work. Whether, as asserted on appeal, the petitioner was not required by 8 C.F.R. § 214.2(h)(2)(i)(B) to provide the itinerary there described is a separate issue from the merits of the director's specialty occupation and LCA determinations, each of which constitute a separate basis for the director's denial of the petition. Consequently, even if the single issue raised on appeal were resolved favorably for the petitioner, the validity of the director's separate determinations to deny the petition on the specialty occupation basis and on the LCA grounds would remain unaddressed, uncontested, and unaffected, and, as such, a proper basis for affirming the director's decision to deny the petition. Therefore, regardless of the outcome of the one issue raised on appeal, the appeal would have to have been dismissed because the petitioner failed to specify any factual or legal error in the director's determinations to deny the petition on the specialty occupation and LCA grounds. *See* 8 C.F.R. § 103.3(a)(1)(v), which requires summary dismissal of an appeal that does not specify any erroneous conclusion of law or statement of fact by the director in denying the petition.

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.