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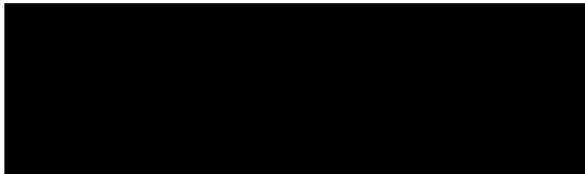
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U.S. Citizenship and Immigration Services
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Washington, DC 20529-2090



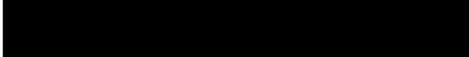
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FILE: WAC 08 150 50181 Office: CALIFORNIA SERVICE CENTER Date: **MAR 04 2010**

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS: This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew to -
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/consulting 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 does not qualify as a United States employer or agent; (2) the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation; (3) the petitioner has not demonstrated that it will comply with the terms of the Labor Condition Application (LCA) it filed for the beneficiary; and (4) the record does not contain sufficient evidence that the job offered is a bona fide position.

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, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In the petition submitted on April 30, 2008, the petitioner stated it has 20 employees and a gross annual income of \$4 million. The petitioner indicated that it wished to employ the beneficiary as a systems analyst from October 1, 2008 through October 1, 2011 at an annual salary of \$52,000.

The scope of the position is described as follows in the itinerary the petitioner submitted with the H-1B petition on behalf of the beneficiary:

Responsible for custom program design, development and implementation of business applications and systems. Analyze user requirements, procedures, and problems to automate processing or to improve existing computer systems. Confer with personnel involved to analyze current operational procedures, identify problems. Write detailed description of user needs, program functions, and steps required to develop or modify computer programs. Further, [r]eview computer system capabilities, [w]orkflow. Study existing information processing system to evaluate effectiveness and develop new systems to improve productivity. Combine system support skills to analyze and assist in developing customized software for industries. Responsible for development, analysis, implementation and maintenance of software applications to meet client's needs and specifications. Programmer Analyst is an independent technical staff member requiring little or no supervision. The position involves extensive use of modern computer languages such as C/C++, Visual basic, and high-end databases. The incumbent creates new solutions and algorithms to manage and implement those solutions. The job duties also include Software Testing and Debugging.

The itinerary states that the beneficiary will spend 40-60% of the time analyzing and designing software,

coding 20-30% of the time, and miscellaneous work 10% of the time. The itinerary also states that the beneficiary will work on a project with a company called Entigence Corporation. *The location of work is listed as being at Entigence Corporation's offices in McLean, VA.* The itinerary provides that the project term is through October 2011, after which the beneficiary will work at the petitioner's offices in Irvine, CA.

In the support letter, the petitioner states that it provides diversified information technology services in the U.S., "[e]ither at a client site through Supplemental IT staffing or off-sourced to an Offshore Software Development facility." The petitioner describes the minimum degree requirements for the proffered position as follows:

In order to perform the job duties of this position, the incumbent must have Bachelor's Degree in Computers, Engineering, Mathematics, Management Information Systems or equivalent and related experience.

The submitted Labor Condition Application (LCA) was filed for a systems analyst to work in Irvine, CA as well as Great Falls, VA from September 12, 2008 to September 12, 2011. The LCA lists a prevailing wage of \$50,523 for Irvine, CA and \$51,168 for Great Falls, VA.

With respect to the proposed worksite where the beneficiary will be assigned, the Form I-129 indicates that the beneficiary will work at the petitioner's offices in Irvine, CA.

The petitioner also included a Work Order for the project with Entigence Corporation that is signed by the petitioner, but not by Entigence Corporation. The Work Order is stated as being pursuant to a Services Agreement between the petitioner and Entigence Corporation, a copy of which is not provided.

The beneficiary's education documents, resume and experience letters were submitted without a credential evaluation. However, in response to the RFE, the petitioner submitted a credential evaluation that is based on a combination of the beneficiary's three-year foreign degree in science and her experience. The credential evaluation claims the beneficiary has the U.S. equivalent of a bachelor's degree in computer information systems.

On July 22, 2008, the director issued an RFE requesting, in part, additional evidence to establish that the proffered position qualifies as a specialty occupation. The RFE also requested evidence to establish that an employer-employee relationship will exist between the petitioner and the beneficiary. The petitioner was advised to submit copies of any contracts, work orders, letters or other documentation from authorized officials at the end-client company. The RFE specifically noted that "providing evidence of work to be performed for other consultants or employment agencies who provide consulting or employment services to other companies may not be sufficient. *The evidence should show specialty occupation work with the actual client-company where the work will ultimately be performed.*" The director also requested documentation evidencing the petitioner's business.

Counsel for the petitioner responded to the RFE, asserting that the petitioner is the actual employer of the beneficiary and that the proffered position is a specialty occupation. Counsel stated that the proffered

position is a specialty occupation because it comes under the U.S. Department of Labor's *Occupational Outlook Handbook's* (*Handbook*) section on Computer Systems Analysts.

Counsel also stated that he wished to clarify the worksite location for the beneficiary, which would only be at the petitioner's offices in Irvine, CA. However, counsel included the petitioner's company overview that reads as follows:

The entire software development process is divided into two components.

On-site component: [The petitioner] deploys an On-site Project Manager at the client site to formulate a Project Plan or a Work Specification Document. Once approved by the client, the On-site Project Manager will review and develop the Customer Requirement Specifications (CRS) or System Requirement Specifications (SRS) documents, to carry out the analysis phase and to complete the High Level Design Documents (HLDD).

Offshore Component: Once the HLDD is prepared, it will be sent to the offshore facilities for Preliminary Design Review (PDR). Then the offshore development team prepares a Low Level Design Document (LLDD). Once the LLDD is generated, the offshore development team will submit the document for Critical Design Review (CDR). On completion of the CDR, a development team will submit the document for Critical Design Review (CDR). On completion of the CDR, a development team will be formed in India under an Offshore Project Manager for the development process. This Offshore Project Manager will be the single point of contact for the On-site Project Manager. These two managers will in turn communicate constantly to collect feedback, update specifications and information, review changes, change management, etc. However, the On-site Project Manager will remain the single point of contact to the client.

Based on the company overview, the petitioner's stated business model is to perform all client work either at the client's premises or off-shore in India. The business model, which consists only of two components (a client site component and an offshore component), does not indicate that any work is performed at the petitioner's offices in Irvine, CA. It would seem, therefore, highly unusual for the petitioner to employ the beneficiary at its offices in Irvine, CA, and no explanation was provided as to why the petitioner would exempt the beneficiary from its normal business practice of assigning workers either to the client site or offshore. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaiqbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, counsel's statement that the work will be performed entirely at the petitioner's offices in Irvine, CA contradicts the itinerary submitted with the petition, which clearly states that the location of work will be at the offices of Entigence Corporation in McLean, VA. 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 petitioner also included an unsigned offer letter addressed to the beneficiary, which does not provide any details about the position description or the job location. In addition, the petitioner did not include any signed contracts or other documents from Entigence Corporation, or any other clients, despite the RFE's specific request that this evidence be provided.

The director denied the petition on September 25, 2008. On appeal, counsel asserts that the petitioner is the employer and that a valid LCA was submitted, however counsel does not address the issue of the director's finding that the proffered position is not a specialty occupation in his brief.

For the first time on appeal, counsel provides a copy of the petitioner's signed offer letter to the beneficiary, dated March 15, 2008, which states: "[y]ou will render all reasonable duties expected of a Systems Analyst. These services will be provided at locations designated by [the petitioner]. . . ." Counsel also provides a copy of the Agreement of Employment between the petitioner and the beneficiary. Neither of these documents describe the project or list the work location.

Also for the first time on appeal, counsel states that the beneficiary will work on an infrastructure virtualization project at the petitioner's offices. Counsel provides a copy of a Letter of Intent written to the petitioner, dated May 15, 2008, after the petition's filing, from a company called Infros, located in Los Angeles, CA, which states that Infros would like to retain the services of the petitioner to provide systems and software development services from the petitioner's offices in Irvine, CA. The Letter of Intent also states that Infros will require a pool of ten Systems Analysts and Programmer Analysts starting the third quarter of Fiscal 2008 through December 2011 and beyond. The project for Infros, which is not described in detail, and has only been communicated through a Letter of Intent, rather than a signed contract, entails developing and implementing infrastructure optimization and virtualization solutions. Additionally, counsel submits a new job description for a Virtualization Systems Analyst. Therefore, it appears that the petitioner does not intend to employ the beneficiary on the project for Entigence Corporation, as initially claimed, but instead plans to assign the beneficiary to a project for Infros, documentation for which was generated after the petition's filing. The petitioner and counsel, therefore, seek to amend the petition on appeal.

As the documentation regarding the proposed project for Infros does not include a signed contract, any Statement of Work or other documentation listing the beneficiary by name, or a sufficiently detailed project description that demonstrates that the beneficiary would perform duties in a specialty occupation, this submitted material is not sufficient to overcome the director's bases for denial. However, even if it were sufficient, the AAO would not consider the documentation on appeal regarding the proposed project for Infros because 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). Moreover, U.S. Citizenship and Immigration Services (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) and 103.2(b)(12). Therefore, the AAO's analysis will be based solely on the position description submitted with the initial petition and in

response to the RFE.

The AAO will first focus this decision on whether the proffered position is a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The 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), 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* indicates that a bachelor's degree level of education in a specific specialty may be preferred for particular positions, 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 do not elevate the proffered position above that of a 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 engineering, computer science, or math, and relevant experience. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 first 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. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

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. The petitioner did not provide any information about its other systems analysts.

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 would indicate no specialization and complexity beyond that of a 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 systems analysts in general.

For the reasons discussed above, the AAO finds that the petitioner has not established that the proffered position qualifies as 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 on this basis.

Second, the AAO will address the issue of whether or not the petitioner qualifies as an H-1B employer or agent. As the director notes in her denial, by not submitting any contracts or other supporting documentation evidencing that the beneficiary would be employed in the proffered position for the period of time and at the location requested in the petition, the petitioner has not established who has or will have actual control over the beneficiary's work or duties, or the condition and scope of the beneficiary's services. In other words, the petitioner has failed to establish whether it has made a bona fide offer of employment to the beneficiary based on the evidence of record or that the petitioner, or any other company which it may represent, will have and maintain an employer-employee relationship with the beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). As discussed above, there are no signed client contracts listing the beneficiary by name that state where the beneficiary will work, the specific projects to be performed by the beneficiary, or for which company the beneficiary will ultimately perform these services. Moreover, as mentioned previously, the itinerary, which lists the worksite as being in McLean, VA, contradicts counsel's assertion that the work will be performed at the petitioner's offices. Therefore, the director's decision is affirmed, and the petition must be denied for this additional reason.

Third, regarding the LCA, because it is not clear that the petitioner had knowledge of the project to which the beneficiary would be assigned at the time the petition was filed, the AAO also finds that the petitioner did not establish eligibility at the time the petition was filed. The Form I-129, which lists the proffered position's location as being at the petitioner's offices in Irvine, CA, does not correspond with the itinerary provided by the petitioner, which states the work will be in McLean, VA. The LCA lists Irvine, CA as well as Great Falls, VA. Even though the petitioner's LCA covers the metropolitan geographical area for the petitioner's offices in Irvine, CA, as discussed previously, the petitioner failed to demonstrate that the beneficiary would perform the majority of the work at the petitioner's offices in contrast to its stated business model of assigning workers to client sites or offshore. The fact that counsel on appeal stated that the beneficiary would be assigned to

work on a different project for a different client than those described in the petition further demonstrates that the petitioner did not know to what project or client the beneficiary would be assigned at the time the petition was filed. The petitioner cannot assert that it will pay the beneficiary the prevailing wage for the geographical area where the beneficiary will be employed as listed in the submitted LCA if the petitioner does not yet know where the beneficiary will perform the work. As such, the petitioner cannot establish that it has complied or will comply with the requirements of § 212(n)(1)(A)(i) of the Act, 8 U.S.C. § 1182(n)(1)(A)(i), as of the time the petition was filed. Again, the 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). For this additional reason, the petition cannot be approved.

Fourth, the AAO also affirms the director's finding that the record does not contain sufficient evidence to demonstrate that the job offered is a bona fide position. By not submitting any contracts or other supporting documentation evidencing that the beneficiary would be employed in the proffered position for the period of time and at the location requested in the petition, the petitioner precluded the director from determining the beneficiary's proposed work schedule, dates of service, pay schedule, and work location. In other words, the director could not establish whether the petitioner has made a bona fide offer of employment to the beneficiary based on the evidence. The regulations state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Beyond the decision of the director, the AAO finds that the petitioner did not submit sufficient documentation to show that the beneficiary qualifies to perform services in any specialty occupation requiring a degree in computers, engineering, mathematics, management information systems or a related field under 8 C.F.R. § 214.2(h)(4)(iii)(C). The correspondence from [REDACTED] at Pacific Lutheran University, with regard to the Credential Evaluation Report from [REDACTED], equating the beneficiary's three-year degree and experience to a U.S. bachelor's degree in computer information systems, asserts that [REDACTED] has authority to grant college credit, but does not state that he has the authority to grant credit for training and/or work experience, which is a requirement under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Therefore, the petition will be denied on this additional ground.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The appeal will be dismissed and the petition denied 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.

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