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



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office:

Date: **SEP 30 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,

*for Michael T. Kelly*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The acting 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.

On the Form I-129 visa petition the petitioner stated that it is a computer consulting firm. To employ the beneficiary in a position designated as a software engineer, the petitioner endeavors 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 acting director denied the petition, finding that the petitioner failed to establish that the petitioner would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the acting director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the acting director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which (1) 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 (2) requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.”

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

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

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry

into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In a letter dated March 31, 2008, submitted with the petition, the petitioner's president provided a description of the duties of the proffered position and stated:

Individuals hired by our company will be scheduled to work on client projects. At the end of a client project, the employees will be scheduled to work on another client project based on the needs at the time.

The petitioner's president also stated, ". . . some employees may perform part of their programming duties at client sites . . . ."

A request for evidence (RFE) the service center issued on April 23, 2008 requested that the petitioner provide, *inter alia*, (1) a list of the petitioner's employees including names, job titles, educational background, project assigned to, and work location, (2) an itinerary of the beneficiary's prospective employment as required by 8 C.F.R. § 214.2(h)(2)(i)(B), (3) leases for the petitioner's business locations,<sup>1</sup> and (4) a copy of the contract with the prospective end user of the beneficiary's services which specifically mentions the beneficiary and the duties he will perform for that end user.

In response the petitioner provided, *inter alia*, (1) various contracts and work orders; (2) a list of 20 employees; (3) copies of job announcements the petitioner placed at an employment website; (4) a letter, dated May 30, 2008, from the petitioner's president; and (5) a document entitled "Human Resource Roles and Competencies Management project." The petitioner did not then provide any leases pertinent to its business location or locations.

The employees' list provided shows the names, educational backgrounds, and certifications held by the petitioner's employees. It does not include their job titles, the projects assigned to, or their work locations. As such, it was not responsive to the service center's request.

The job announcements indicate that the petitioner is seeking software engineers and requires a minimum of a bachelor's degree or the equivalent plus experience. They do not indicate that the required degree must be in any specific specialty.

In his letter, the petitioner's president stated:

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<sup>1</sup> The RFE stated that the petitioner had indicated, on the LCA, that it had offices in [REDACTED] and asked for leases for both locations. The AAO does not find that the petitioner indicated that it had offices in [REDACTED]. The RFE still obliged the petitioner to provide leases for any business locations it did have. The LCA and the visa petition both indicated that the petitioner had a business location in [REDACTED].

[The beneficiary] is expected to work only at [REDACTED]. We are aware that H-1B classifications are subject to geographical limitations, and a new classification will accordingly be sought in the event that relocation becomes necessary.

The petitioner's president also stated, "All Employees working with [the petitioner] posses [sic] Bachelor's/Master degree in Computer Science . . . ." As to the itinerary, the petitioner's president stated, "[The beneficiary] will be working on HRMS Project at [the petitioner's location]. Details of the project are enclosed as Exhibit IV."

As to the petitioner's requirements for the proffered position, the petitioner's president stated:

As is standard in the industry, [the petitioner] requires that the individual we hire in this professional position possess, at minimum, a Bachelor's degree in Computer Science or related field, or the foreign equivalent of the same.

The petitioner's president noted that the beneficiary has a bachelor's degree in electrical engineering.

The Human Resource [REDACTED] project document is labeled Exhibit IV and contains a lengthy description of the petitioner and its history. Although the title appears to refer to a project that may include programming duties, the document says little about the project or the intended product. That document appears to indicate that this is the petitioner's own project, as the document does not name a client or refer to one.

The contracts and work orders provided show that the petitioner has agreements to provide computer personnel as needed to [REDACTED] of [REDACTED] Corporation, a staffing services with offices in various states; [REDACTED] Technology Solutions, a staffing, consulting, and outsourcing firm in [REDACTED] and [REDACTED]; [REDACTED] Consulting Group, Inc.; a [REDACTED] consultancy; [REDACTED], a [REDACTED] company that provides data processing consultants, companies, or individuals; [REDACTED] Consulting, Inc., a [REDACTED] computer consultancy; [REDACTED] Consultants, Inc., of [REDACTED] Software Solutions, a [REDACTED] Corporation with Principal Administrative Offices in [REDACTED] [REDACTED] with principal business location in [REDACTED] [REDACTED] of [REDACTED] and [REDACTED] Software Incorporated, a [REDACTED] Corporation.

Most of those companies appear to be in the business of providing computer personnel to work on other companies' projects. None of the agreements described the job duties of the proffered position. Most of those contracts and work orders do not identify the locations where the work would be performed. Those that do identify a location state that the work is to be performed in [REDACTED] and [REDACTED]. Some of the work orders identify the employee to be provided under the agreements, but none identify the beneficiary.

The acting director denied the visa petition on June 12, 2008, finding that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation.

On appeal, counsel stated, "The position of Software Engineer with the Petitioner requires a Bachelor of Science Degree. The position requires a lot of responsibility and is highly complex."

Counsel cited a decision the AAO issued in 2000, the facts of which counsel asserted are similar to those of the instant case and noted that, in that case, the AAO found that the proffered position, which was designated a software engineer position, was a position in a specialty occupation. Counsel also cited that case for the proposition that a bachelor's degree in electrical engineering qualifies one for a position as a software engineer.

Counsel also provided a copy of the lease of the petitioner's [REDACTED] location, and an evaluation performed by an evaluator at the [REDACTED] Corporation in [REDACTED] that stated that the beneficiary's education and degree in electrical engineering awarded in India is equivalent to a Bachelor of Science degree in electrical engineering awarded in the United States.

The lease provided on appeal was previously, before the issuance of the decision of denial, requested by the service center. 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)(12). The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The RFE specifically requested a copy of the lease and provided the petitioner the opportunity to provide it for the acting director before the adjudication of the merits of the petition. However, the petitioner failed to submit the requested lease in response to the RFE, and has now submitted it on appeal. Because the lease was specifically requested in the RFE but not provided within the period provided in the RFE, it will not now be considered. As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the RFE. Moreover, the USCIS regulations governing the RFE process preclude the consideration of evidence requested in an RFE but not submitted as part of a timely response to the RFE. *See* 8 C.F.R. §§ 103.2(b)(11) and (b)(14).

Further, the apparent purpose in requesting a copy of the petitioner's lease was to determine that the petitioner maintained an office and that the office was sufficient for the business the petitioner purported to operate. This bears upon whether the petitioner was actually operating a business, as it claimed, when it submitted the visa petition, and whether its premises were sufficient to accommodate another employee. The lease provided, however, was dated June 27, 2008 and was for a rental term to commence on July 1, 2008. This was after the petitioner submitted the visa petition, after the issuance of the RFE, and after the response to the RFE was due. Even if it were to be considered, the provided copy of the petitioner's lease is poor evidence that, when the petitioner submitted the visa petition, the petitioner was in business and had premises sufficient to accommodate an additional worker.

The AAO notes that, in submissions with the visa petition, the petitioner stated that the beneficiary would work on other companies' projects. When questioned about the types of projects, the beneficiary's duties with respect to those projects, and the locations where the work would be performed, the petitioner revised its claim, indicating that the beneficiary would be employed exclusively at the petitioner's own location while in H-1B status, at least until further notice.

When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed justifies approval of the petition. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the service center's RFE does not clarify or provide more specificity to the original duties of the position, but rather revised the petitioner's claim of the work the beneficiary would perform, which is not merely material, but fundamental to whether the visa petition may be approved. Such a change is not permitted, and the decision in this case will be based on the assertions contained in the initial petition and the extent to which the timely-submitted evidence in the record supports them.

Next, counsel's citation of unpublished, non-precedent decisions is without effect. Although 8 C.F.R. § 103.3(c) provides that USCIS precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Although counsel is permitted to note the reasoning of a non-precedent decision, to argue that it is compelling, and to urge its extension, counsel's citation of a non-precedent decision is of no precedential effect. Further, counsel's reliance on the non-precedent AAO decision is misplaced, for neither the decision nor counsel's comments upon it indicate that the acting director erred in his application of the relevant statutes and regulations to this particular proceeding. In this regard, the AAO notes that, in making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding (*see* 8 C.F.R. § 103.2(b)(16)(ii)), and nothing in this record of proceeding indicates that the decision reached in the non-precedent decision would be the correct outcome here.

Further, to determine whether a particular job qualifies as a specialty occupation position, the AAO does not rely on the job title. Critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform for the entity or entities ultimately determining the work's content.

The court in *Defensor v. Meissner*, 201 F. 3d 384 recognized that, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position

qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. Such evidence must be sufficiently detailed and explained as to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. The record of proceeding lacks such substantive evidence from any end-user entities that may generate work for the beneficiary and whose business needs would ultimately determine what the beneficiary would actually do on a day-to-day basis. In short, as noted by the acting director, the petitioner has failed to establish the existence of H-1B caliber work for the beneficiary.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner's normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Because the petitioner has not established that the beneficiary would be employed in a specialty occupation, the appeal will be dismissed and the petition denied.

Also, at a more basic level, as reflected in this decision's discussion of the evidentiary deficiencies, the record lacks credible evidence that when the petitioner filed the petition, the petitioner had secured work of any type for the beneficiary to perform during the requested period of employment. 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)(12). 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. For this reason also, the appeal will be dismissed and the petition denied.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the acting director's decision shall not be disturbed. As the adverse determination of the specialty occupation issue is dispositive of the appeal, the AAO will not further address its finding that the petitioner has not demonstrated that the beneficiary is qualified for the proffered position.

The record suggests several issues that were not addressed in the decision of denial but that, nevertheless generate additional bases upon which the petition must be denied. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The petitioner has indicated that all of its employees have either a bachelor's degree in computer science or a master's degree in computer science. The beneficiary has a bachelor's degree in

electrical engineering. This does not appear to be a degree in the specific specialty that would qualify him for the proffered position.<sup>2</sup>

Further, the petitioner's failure to provide an itinerary of the beneficiary's projected employment raises two additional bases for denial.

The petitioner is obliged, by 8 C.F.R. § 214.2(h)(2)(i)(B), to provide an itinerary as initial evidence submitted with the visa petition. The petitioner has not complied with that requirement, and the appeal will be dismissed and the petition denied for this additional reason. The petitioner's failure to provide an itinerary raises another issue, however, in addition to failure to comply with the requirement of 8 C.F.R. § 214.2(h)(2)(i)(B).

Rather than merely denying the visa petition because of the petitioner's failure to comply with the requirement of 8 C.F.R. § 214.2(h)(2)(i)(B) the service center requested, in the RFE that the petitioner "Submit a detailed itinerary of the work sites the beneficiary [would] be assigned to, to include specific dates, locations, and clients that the beneficiary [would] be servicing." The petitioner did not comply with that request.

Even if the petitioner were not compelled by 8 C.F.R. § 214.2(h)(2)(i)(B) to provide an itinerary as part of the initial evidence in this matter, the regulations provide the acting director with broad discretionary authority to request evidence in support of a petition. Specifically, pursuant to 8 C.F.R. § 214.2(h)(9)(i), the acting director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he 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, in addition to 8 C.F.R. § 214.2(h)(9)(i), the regulation at 8 C.F.R. § 103.2(b)(8) provides the acting 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 a request 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 request for evidence. *See* 8 C.F.R. § 214.2(h)(9). The purpose of a 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)(1), (b)(8), and (b)(12).

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<sup>2</sup> If, on the other hand, the petitioner were to maintain that a degree in fields as disparate as computer science and electrical engineering qualify one to hold the proffered position, this would be additional evidence that the position could not qualify as a specialty occupation, as it would constitute an admission that the proffered position does not require a minimum of a bachelor's degree or the equivalent **in a specific specialty**.

The AAO finds that, in the context of the record of proceedings as it existed at the time the request for evidence was issued, the 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.

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). Here, in addition to being required initial evidence, as the detailed itinerary was material to a determination of whether the work to be performed by the beneficiary would be in a specialty occupation, the petitioner's failure to provide this specifically requested evidence precluded a material line of inquiry. As such, the petition must be denied for this additional reason.

Yet further, in the RFE, the service center requested a copy of the petitioner's lease, apparently to determine that the petitioner, which claims to operate a business, has business premises and whether those premises were sufficient to accommodate an additional worker. The response to that RFE, including the lease, was due on June 7, 2008. The petitioner did not provide a lease in response to that request. The submission of a lease on appeal does not mitigate the failure to provide it to the service center when requested.

Again, 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). The appeal will be dismissed and the petition will be denied for the additional reason that the petitioner failed to timely provide a copy of its lease when it was specifically requested.

Further still, the original submission in this matter included a letter from the petitioner's president that indicated that some of the duties of the proffered position might be performed at client sites. As was noted above, the petitioner's president later revised the claim to eligibility, stating that the beneficiary would work at no location other than the petitioner's offices, but the AAO has determined that it will disregard this amendment. The petitioner has not demonstrated, therefore, that the LCA submitted to support the visa petition is valid for employment at all of the sites at which the beneficiary would work. The appeal will be dismissed and the visa petition denied for this additional reason.

Even further, the RFE requested that the petitioner provide a list of the petitioner's employees including names, job titles, educational background, project assigned to, and work location. As was noted above, the petitioner's timely submission of a list did not include the petitioner's employees' job titles, the projects to which they were assigned, and their work locations and was not, therefore, responsive. The list requested in the RFE was due on June 7, 2008, and an amended employee list submitted on appeal will not be considered. The employee list requested was material to the determination of whether the petitioner has ample work for its current employees and has work for the beneficiary to perform. The appeal will be dismissed and the visa petition denied pursuant to

8 C.F.R. § 103.2(b)(14) based on the petitioner's failure to timely submit the requested employee list.

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

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