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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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U.S. Citizenship and Immigration Services

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FILE: WAC 09 028 50470 Office: CALIFORNIA SERVICE CENTER Date: APR 01 2011

IN RE: Petitioner: [redacted]
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:

[redacted]

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 $630. 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 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, filed November 10, 2008, the petitioner stated that it is a software development and consultancy firm. To employ the beneficiary in what it designates as a programmer analyst position, the petitioner endeavors to classify her 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 appeal is filed to contest the basis upon which the director denied this petition, specifically, that the petitioner failed to demonstrate that the Labor Condition Application (LCA) submitted in support of the visa petition is valid for the area in which the beneficiary would work. The AAO will also discuss other issues suggested by the record. 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 director's denial letter; and (5) the Form I-290B and counsel's brief in support of the appeal.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) expressly includes a certified LCA among the documents that a petitioner "shall submit" with an H-1B petition, and the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) states:

> 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.

In order for a petition to be approvable, the LCA submitted for an H-1B petition must correspond to the location where the beneficiary would work, as that location determines the prevailing wage threshold that sets the minimum wage or salary that the petitioner must pay, absent an obligation to pay a higher wage based upon its paying higher wages to similarly situated employees.

At the time of filing the petition, then, the petitioner must file a certified LCA valid for the work location specified in part E of the LCA, and part F for an additional or subsequent work location. The work location is critical in determining the prevailing wage for the occupation in the area of intended employment. *See* 20 C.F.R. §§ 655.730(c)(4) and (d)(1).

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

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

[Italics added]. The regulation at 20 C.F.R. § 655.705(b) manifestly requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary.

The director noted that the petitioner stated, on the visa petition, that it would employ the beneficiary in Chatsworth, California and that the LCA is valid for employment in Chatsworth, but that evidence in the record indicated that the beneficiary might work in Los Angeles, Signal Hill, Sierra Madre, or Northridge, California. The AAO notes, however, that each of those locations is located within the Los Angeles-Long Beach-Glendale Metropolitan Statistical Area (MSA). Approval of the visa petition would not be barred by the assertion that the beneficiary would divide her time between those locations.

In a letter dated September 30, 2008 and submitted with the visa petition, the petitioner's vice president provided the following description of the duties of the proffered position:

- Develop software and study existing business processes and organizational procedures and transform them to software solutions facilitating office automation. Write detailed description of user needs, and document steps required to develop or modify computer applications. Analyze business procedures and problems to redefine data and convert to programmable form for EDP for commerce, data exchange or syndication. Study existing information processing systems to evaluate effectiveness and develop new systems to improve production or work flow as required. Conduct studies pertaining to development of new Information systems to meet current and projected needs. (35%)
- Write detailed description of user needs, and document steps required to develop or modify computer applications using software languages. (20%)
- Analysis [sic], research, design, write specifications effectively maintain, enhance, develop applications software consistent with the petitioner's needs. Design new application and develop application prototypes. (20%)
- Promote efficient user utilization of the system. Co-operate with and provide technical support to project teams and members and associates. Develop and maintain proficiency in utilizing technical and analytical tools to give optimum results to the management and business. (15%)
- Analysis, conversion coding, code walkthrough, unit and integration testing. (10%)

That letter and other evidence then in the record suggested that the petitioner offers computer consulting services at clients' sites.

Because the evidence then in the record was insufficient to demonstrate that the visa petition was approvable, the service center, on December 30, 2008, issued a RFE in this matter. In service center requested, *inter alia*, (1) evidence from the end-users of the beneficiary's services comprehensively describing the beneficiary's duties; and (2) an itinerary specifying the dates of each engagement of the beneficiary or service she will perform including the name and address of the end-user of the beneficiary's services and the name and address of the entities at whose location the beneficiary would work, the services the beneficiary would provide, and the period during which she would provide them.

In response to the request for evidence from the end-users of the beneficiary's services, counsel provided undated letters from [redacted]

> [The beneficiary] is working as a Software Consultant for Amacksoft Inc. from Nov. 14th 2008 till present. She is on a contract with us for 1.5 years through Northstar Technology Systems. During this term she will be working solely for us and our clients. She is currently working on projects from out Clients Ligons N Tigons and Zubaires. The contract has been included along with this declaration. Also included is the recommendation from one of our clients, Ligers N Tigons LLC.

The letter from Ligers -n-Tigons states:

> This is to certify that [the beneficiary] has been working as a Consultant through our Vendor Amacksoft Inc[.] She has been performing her duties and tasks assigned to her in a very timely and professional manner. We are pleased with her performance. She is [an] extremely dedicated and goal[-]oriented person.

Counsel provided a contract between the petitioner and Amacksoft Inc. of Signal Hill, California. That contract describes the terms pursuant to which Amacksoft agreed it might purchase the services of the beneficiary and one of the petitioner's other employees. That contract states that it was entered into on November 6, 2008, but it was signed by the petitioner's representative on November 12, 2008. That contract states that it shall commence on November 14, 2008 and terminate on June 14, 2009, unless previously terminated. It states an hourly rate that Amacksoft would pay for the beneficiary's services, but no minimum number of hours for which Amacksoft would commission the beneficiary's services. That contract indicates that Amacksoft, if it elects to use the beneficiary's services, would issue a work order, and that Amacksoft is free to employ the beneficiary itself, not as a contractor provided by the petitioner, but as Amacksoft's own employee, after a work order has been in effect for six months.

That contract also states that Amacksoft would pay the petitioner's expenses for travel to and from all work sites, lodging expenses if overnight stays are required, and miscellaneous travel expenses including parking and tolls. That term of the contract suggests that considerable non-local travel is anticipated pursuant to that contract.

Counsel also provided the contracts alluded to in the Amacksoft letter. One of those contracts is between Amacksoft and Ligers -n- Tigons of Sierra Madre, California. That contract states that its effective date is November 12, 2008, but the contract and the signatures on it are otherwise undated. The contract contains no indication that it was ratified prior to November 12, 2008.

That contract states that Amacksoft agreed to provide the beneficiary to work for Ligers -n- Tigons beginning on November 8, 2008 and continuing for six months unless previously terminated by either party, which they are free to do at will. It specifies that during that period she will work for up to 20 hours per week, but no minimum is stated. That contract further states that Ligers -n- Tigons may assign its rights and obligations to another party. It does not limit the geographical area to which Ligers and Tigons might assign the beneficiary, or the duties the beneficiary might perform for Zubaires's assignee.

The other contract is between Amacksoft and Zubaires of Northridge, California, and is very similar to the contract with Ligons -n- Tigons. In it, Amacksoft agreed to provide the beneficiary to work for Zubaires for up to 20 hours per week beginning on January 19, 2009 and continuing for one year, unless that employment is previously terminated by either party, which they are free to do at will. That contract further states that Zubaires may assign its rights and obligations to another party. It does not limit the geographical area to which Zubaires might assign the beneficiary, or the duties the beneficiary might perform for Zubaires's assignee. That contract states that its effective date is January 19, 2009, but is otherwise undated and contains no indication that it was ratified prior to that date.

The AAO further observes that neither of those letters and none of those contracts provides the comprehensive description of the beneficiary's duties that the service center requested in the December 30, 2008 RFE.

The director denied the visa petition finding that the petitioner had not demonstrated that the beneficiary would be employed in an area for which the LCA is valid. On appeal, counsel asserted that the beneficiary would work only in Sierra Madre and Northridge, California, and that, as they are within the same geographical area as Chatsworth, California, for which the LCA is approved, an amended LCA was unnecessary. Counsel did not address the clause in the contract between Amacksoft and Ligers -n- Tigons that strongly suggests that they are free, if they wish, to assign the beneficiary to do any work in any location for any company.

For various reasons, any one of which is sufficient for denial, the petitioner has failed to demonstrate that the beneficiary would be employed exclusively, or even principally, within the area for which the LCA is valid.

First, the period of requested employment in this case is from October 8, 2008 to October 9, 2011. The petitioner has a contract with Amacksoft stating terms pursuant to which it may purchase the beneficiary's services from the petitioner for a portion of that period. Amacksoft is bound, if it chooses to purchase the beneficiary's services under that contract, to abide by those terms. It is not bound, however, to purchase the beneficiary's services.

Amacksoft, in turn, has contracts pursuant to which it may provide the beneficiary's duties for as many as 20 hours per week with Ligers -n- Tigons from November 8, 2008 to May 7, 2009, and for up to 20 hours per week with Zubaires from January 19, 2009 to January 18, 2011. Those periods overlap from January 19, 2009 to May 7, 2009 such that, during that period, the petitioner has demonstrated that beneficiary might, rather than would, work full-time, as stated on the petition, depending upon whether Ligers -n- Tigons and Zubaires both opted to provide 20 hours of work per week to the beneficiary. Although those contracts are binding as to the terms pursuant to which Amacksoft would provide the beneficiary's services to those two other companies, neither company is bound to purchase any services pursuant to those contracts, and they are permitted to terminate those contracts at will.

Further, even if both of those companies opted to employ the beneficiary for 20 hours per week for the full term of those agreements, the petitioner would still not have demonstrated where the beneficiary would work during the balance of her alleged full-time job throughout the period of requested employment.

Finally, as is detailed above, each of those contracts appears to have been ratified after the visa petition was submitted. 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 (Reg. Comm. 1978). The letters and contracts submitted are not evidence that, when the visa petition was submitted, the petitioner had secured definite, non-speculative work for the period specified in the petition. Therefore, they are not evidence that the instant visa petition is approvable.

The evidence submitted does not guarantee any employment at all, does not cover the entire period of requested employment, is not for full-time employment for other portions of the employment period, and is only evidence of agreements entered into after the petitioner submitted the visa petition. For all of those reasons, that evidence fails to demonstrate that the petitioner, when it filed the visa petition, had secured any work at all for the beneficiary to perform, let alone specialty occupation employment.

Because the petitioner has not demonstrated where the beneficiary would work throughout the entire period of requested employment, it has not demonstrated that the LCA is valid for all of the locations where the beneficiary would work. The LCA has not been shown, therefore, to correspond to the visa petition, and the visa petition may not be approved. The appeal will be dismissed and the visa petition will be denied on this basis.

The record suggests additional issues that were not addressed in the decision of denial. The AAO will first address whether the petitioner has shown that the beneficiary would be employed in a specialty occupation.

The AAO analyzes the specialty occupation issue according to the statutory and regulatory framework below.

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.

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.

To determine whether a particular job qualifies as a specialty occupation position, the AAO does not rely solely on the job title or the extent to which the petitioner's descriptions of the position and its underlying duties correspond to occupational descriptions in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*. 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.

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.

The regulation at 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 (5th Cir. 2000) (hereinafter referred to as *Defensor*). 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.

Evidence in the instant case shows that the petitioner does not intend to assign the beneficiary to specific duties. Rather, it intends to provide the beneficiary to other companies to work for them, typically through an intermediary company like Amacksoft, and to charge those other companies for the beneficiary's services. Such end-client firms would generate and determine the particular nature and scope of the beneficiary's duties while she is assigned to their projects.

Because the petitioner will not, itself, be assigning the beneficiary's duties, the petitioner is obliged, in order to demonstrate that the proffered position is a position in a specialty occupation within the meaning of section 214(i)(1) of the Act, to provide a comprehensive description of the beneficiary's proposed duties from an authorized representative of that client of the petitioner who will be the end user of the beneficiary's services.

In *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000), the court held that the Immigration and Naturalization Service, now USCIS, reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing the proposed beneficiaries require a bachelor's degree for all employees in that position. The court found that the degree requirement should not originate with the employment agency that brought the beneficiaries to the United States for employment with the agency's clients.

The contracts that Amacksoft has procured to provide the beneficiary's services to Zubaire and to Ligers -n- Tigons do not contain any indication of the duties to which either Amacksoft or its clients would assign the beneficiary. Further, those contracts indicate that those clients are free to assign the beneficiary to another company, which might or might not assign him to perform duties in a specialty occupation. Further still, there is no indication of the end-client for whom the beneficiary would work for a portion of the period of requested employment.

Without the comprehensive descriptions from all of the end-user entities of the specific duties that the beneficiary would perform for them in the context of their particular business operations, the petitioner has not demonstrated that the work the beneficiary would perform at external job sites would qualify as work in a specialty occupation.

Further, as was noted above, the visa petition was filed on November 10, 2008, but the effective dates of the contracts provided to show that the petitioner has work for the beneficiary are after that date. 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. Again, 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 at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The petitioner'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 did not demonstrate that it would employ the beneficiary in a specialty occupation, the petition was correctly denied. That basis has not been overcome on appeal, and the appeal will be dismissed and the petition denied for that reason.

The AAO will next address whether the petitioner has standing to file the visa petition. The regulation at 8 C.F.R. § 214.2(h)(2)(i)(A) identifies a "United States employer" as authorized to file an H-1B petition. "United States employer" is defined at 8 C.F.R. § 214.2(h)(4)(ii) as follows:

> *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:
>
> (1) Engages a person to work within the United States;
>
> (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
>
> (3) Has an Internal Revenue Service Tax identification number.

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(F) allows a "United States agent" to file a petition "in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf."

In the September 30, 2008 letter the petitioner's vice president stated that the petitioner is the beneficiary's employer, thus disclaiming an agency relationship. The AAO concurs that no agency relationship exists, and will analyze whether the petitioner truly is the beneficiary's employer within the meaning of 8 C.F.R. § 214.2(h)(2)(i)(A) 8 C.F.R. § 214.2(h)(4)(ii).

To qualify as a United States employer, a petitioner must satisfy all three of the criteria at 8 C.F.R. § 214.2(h)(4)(ii). With regard to the requirement at 8 C.F.R. § 214.2(h)(4)(ii)(2) that a U.S. employer have an employer-employee relationship with its beneficiary, the AAO notes that the record's evidence demonstrates that, rather than working on the petitioner's own projects, the beneficiary would work for other companies that the petitioner assigned her to, typically through intermediary companies. This suggests that the petitioner would neither assign specific duties to the beneficiary, supervise her performance, nor have the right to control the work she would perform during her assignments. Under these circumstances, the petitioner does not appear to have an employer-employee relationship with the beneficiary.

As the petitioner is neither the beneficiary's agent nor its employer, it lacks standing to file the instant visa petition. The appeal will be dismissed and the visa petition denied for this additional reason.

The AAO will next address the petitioner's failure to provide certain required evidence and certain requested evidence.

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. 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 December 30, 2008 request for evidence, that the petitioner submit:

> an itinerary that specifies the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues, or locations where the services will be performed for the period of time that temporary employment is requested.

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 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 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, 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 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 that the director may issue. *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).

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, in a location for which the LCA is valid.

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 appeal will be dismissed and the visa petition denied for this additional reason.

The RFE also requested that the petitioner provide evidence from the end-users of the beneficiary's services comprehensively describing the beneficiary's duties. None of the evidence provided from end-users of the beneficiary's services addresses the requirement that the end-users specify what specific duties the beneficiary would perform. The petitioner did not, therefore, comply with this additional request. 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).

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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 denied.

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