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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

D2

[Redacted]

Date: APR 22 2011

Office: [Redacted]

FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:

[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 
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, submitted November 17, 2008, the petitioner stated that it is a software development and consulting firm with "250+" employees. To employ the beneficiary in a position designated as a systems analyst position, 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 director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel submitted a brief, asserting that the evidence submitted is sufficient to show that the beneficiary would be employed in a specialty occupation.

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 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 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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

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

In a letter, dated November 14, 2008 and submitted with the visa petition, the petitioner's finance manager stated, "The itinerary of the beneficiary will be as follows: 9.00 a.m. to 6.00 p.m. Monday through Friday, with an hour off for lunch . . ." She also stated, "Should there be any change in the location of the work site necessitating a revised labor condition application, such as [if] the beneficiary is found to work at the other clients['] work sites, we will submit a new petition to the Service . . ."

That letter described the duties of the proffered position as follows:

Beneficiary will be responsible for analyzing user requirements, procedures and problems to improve existing system. He will design, develop and implement customized business software applications using Java, J2EE, Web Logic, Web sphere, Apache, Tomcat, Swing, XML/XSLT, Tibco, Struts, Java Script, XML/XSL, Oracle and SQL Server *etc.* on Unix and Windows NT/2003. To conduct studies pertaining to development of new information systems to meet current and projected needs.

[Verbatim from the original.]

In his own letter of November 14, 2008, counsel stated:

In order for [the beneficiary] to satisfactorily perform [the duties of the proffered position], it is required that he should have attained at the minimum a baccalaureate degree or equivalent in the field of Engineering, Math, or Computer Science.

In order to show that the proffered position qualifies as a position in a specialty occupation, the petitioner is obliged to show that the petition requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*. Engineering, math, and computer science do not delineate a specific specialty.¹ That the educational requirement of the proffered position may be satisfied by a degree in any of that wide array of subjects demonstrates that the proffered position is not, in fact, a specialty occupation. This is sufficient reason, in itself, to dismiss the appeal and deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue.

¹ In fact, even if the proffered position required an otherwise unspecified degree in engineering, without any permissible alternatives, the position would not be a specialty occupation position. This is because the field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or engineering, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Because the evidence submitted with the visa petition did not demonstrate that the petitioner would employ the beneficiary in a specialty occupation position, the service center, on December 23, 2008, issued a request for evidence in this matter. The service center requested, *inter alia*, “. . . the business name of each work location with a list of all [of the petitioner’s] employees assigned to that location.”

In response, counsel submitted a list of the petitioner’s 253 employees. A job location is listed for each employee. Those job locations, however, are only the names of cities and towns, such as [REDACTED]. The businesses in those towns to which the petitioner’s workers provide their services are not identified. The AAO notes that this list was not responsive to the service center’s December 23, 2008 request.

Counsel also submitted a letter, dated February 3, 2009. In that letter counsel asserted that the petitioner has a sufficient volume of specialty-occupation level business and contracts to ensure that the beneficiary will be working in a specialty occupation for the entire period of employment specified in the Form I-129. The pertinent paragraphs state:

The employment is not speculative[.] [T]he Company [has] on going consulting programs and in[-]house projects which require a number of computer professionals. [The petitioner] is also a contractor to provide services to a number of corporations. Many consultants leave the company for better job[s][,] leaving the project in between. A number of qualified person[s] are required to perform various project[s] awarded by these companies[.]

The strength of the company, volume of business and contracts for specialty work projects clearly indicates the [petitioner] has sufficient work and resources available for his in[-]house projects so that the beneficiary will be performing services in a specialty occupation for the requested period of employment. . . .

As enclosures to the letter, counsel submitted copies of contracts and a spreadsheet of the petitioner’s aged receivables to support her statement pertinent to the petitioner’s volume. None of the contracts are specifically for the services of the beneficiary, and counsel did not then state what project or projects the beneficiary would be working on or what specific duties would be generated for him by any particular project.

Among additional documents submitted in response to the RFE is an undated letter from the petitioner’s senior vice president, addressed “To Whom It May Concern,” which describes the proffered position as follows:

Job Description: The beneficiary will design, develop, implement and configure business intelligence modules using software components like Java, J2EE, Web Logic, Web Sphere, Apache, Tomcat, HTML/DHTML, Java Script, XML/XSL and XML on Oracle, DB2, MS SQL databases and running on Windows /Unix platforms. Additionally, the beneficiary will use tools like Telelogic Doors, Rational Requisite

Pro and Rational Rose for framing process flows and documenting the requirements. The beneficiary will work 40 hours per week. He will perform his duties based on the work allocation by the IT Manager and Team Leaders. He will use his implementation experience to design and deploy business intelligence solutions for various web site development through all phases of functional requirements gathering, solution architecture, prototyping, deployment, and post implementation support which produce the expected results such as optimized required sites of the clients.

The senior vice president's letter also indicates that the beneficiary will be working on "[the petitioner's] project," which the letter describes as follows:

The project in which the beneficiary will work

We, through our projects execution arm [REDACTED] have instituted expertise in Web designing and hosting for various profession[s] and industries. We are in the business of delivering state of the art Web Designing and Development (WDD) solutions to our clients across the US and Europe. We are currently developing a series of ready made web design sites for various profession[s] and industries and these can be customized by the clients as per its requirements once we trained them in the upgrading the sites. The goal of project is to maximize the capacity of available services or products to ensure the best results. The solution has a complex mathematical optimization model based on the Web design at its core will have a custom user interface where the client users will be able to optimize their marketing results/sale interactivity. The project requires expert level Web solution design, data modeling and optimization skills with extensive client interaction for getting detailed functional requirements phased implementation on their systems in a continuous improvement manner based on their feedback.

[Verbatim from the original.]

The senior vice president's letter also lists the following duties of the proffered position:

- Analyze user requirements, procedures and problems in the system to improve and modify existing system program;
- Install, configure and monitor database replication using snapshot, transactional or merge replication to provide database redundancy across multiple geographical locations.
- Develop geographic database failover solutions using Visual Basic, HTML, SQL-DMO and T-SQL for business critical applications like Desktop Image Deployment, Enterprise Crystal Report, Informatica and Web PORTALS.
- Create and manage database users and implement SQL Server Security using Mixed Authentication or Windows Authentication.

- Maintain the user accounts and passwords for privileged and non-privileged accounts and ensure that they are maintained according to the security policies.
- Monitor SQL Server down, SQL Server Agent down, Error log, Application and System logs, Job failures, Backup Failures, Database and Log growth, CPU Utilization, Memory Utilization and Disk Utilization using the SQL Server monitoring tool, MS SWL Help Desk, developed in house by himself. This tool was developed using SQL-DMO and T-SQL programming languages.
- Use SQL Server Profiler (Server and Client traces), Performance (System) Monitor, Index Tuning Wizard and Query Analyzer to monitor and troubleshoot SQL Server performance issues.
- Capture SQL Server statistics and compare it with the base line performance values to evaluate SQL Server performance.
- Design, develop, test, implement and maintain software applications in Client/Server environment and web based applications using Java, J2EE (JSP, Servlets, EJB), Web Logic, Web Sphere, Java Script, Oracle, MS SQL Server, etc.
- Developing Stored Procedures, Triggers and Packages using Transact SQL for Sybase and SQL Server database
- Validate the backup by restoring the database on the test server on the first week of every quarter.
- Design and implement database backups and restore strategy on disks and tapes. Develop database disaster recovery checklists for each server.
- Report SQL Server bugs and issues to Microsoft PSS Support.
- Work with Microsoft PSS Support to troubleshoot and debug SQL Server/Windows problems.
- Prepare training material for client users regarding functionalities and reports of the solution and how to use the solution to achieve the best results.

The petitioner's senior vice president stated, "We, through out projects execution arm [REDACTED] [REDACTED] have instituted expertise in Web designing and hosting for various professions and industries." The petitioner's senior vice president appears to indicate that [REDACTED] is a division of the petitioning company, but provided no evidence in support of that assertion.

The director denied the visa petition on February 19, 2009 finding, as was noted above, that the petitioner had failed to demonstrate that it would employ the beneficiary in a specialty occupation.

In a letter dated February 16, 2009, and submitted on appeal, the petitioner's president asserted, [REDACTED] Corporation[,] is also the Web Development project execution arm of [the petitioner]. (Exhibit II)." Apparently to support that assertion, counsel provided printouts pertinent to [REDACTED] Those printouts show that [REDACTED] and the petitioner share a mailing address. The record contains no other evidence to support the assertion pertinent to the business relationship between the petitioner and Ria Enjolie, Inc.

Also on appeal, counsel submitted an affidavit, dated March 16, 2009, from the petitioner's president. That affidavit states, *inter alia*:

On December 10, 2008, we received confirmation of a project at [REDACTED] Insurance at [REDACTED] then [the beneficiary] was sent there to work at [REDACTED]. It is a long term project.

Counsel also provided a letter, dated February 27, 2009, from the CIO of [REDACTED] Group, of [REDACTED], addressed "To Whomsoever It may Concern." That letter states:

This is to certify that [the beneficiary], an employee of [the petitioner] is working as a Systems Analyst, through our vendor, [REDACTED] Group, Inc with [REDACTED] Mutual Insurance Company, [REDACTED] on our projects.

It further states:

[The beneficiary's] initial work order is for one year but we will continue to require the services of [REDACTED] on these projects. These projects will continue for approximately 3-5 years.

A contract and a work order, both dated November 25, 2008, between the petitioner and [REDACTED] indicate that the petitioner agreed to provide the beneficiary to MIT for one year, which period would then be extended on a month-to-month basis as necessary to complete the project. It states that the end client in that arrangement is [REDACTED] in [REDACTED].

In the appeal brief, counsel stated:

[The beneficiary] was initially assigned to work at in house project but as per confirmation of a project at [REDACTED] Insurance at [REDACTED] [REDACTED] was assigned to work there. It is a long[-]term project but most of the contracts are given for six months to one year which may be extended as per requirements. A proper LCA was also prepared for the [REDACTED] (Exhibit A).

[Verbatim from the original.]

Counsel submitted a new LCA to support the visa petition. That LCA is for employment in [REDACTED] and was certified on December 10, 2008.

The regulation at 8 C.F.R. § 103.2(b)(1), which states in pertinent part:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions.

The regulations require that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner obtain a certified LCA from the DOL in the occupational specialty in which the H-1B worker will be employed. *See* 8 C.F.R. § 214.2(h)(4)(i)(B). The instructions that accompany the Form I-129 also specify that an H-1B petitioner must document the filing of a labor certification application with the DOL when submitting the Form I-129.

The Form I-129 filing requirements imposed by regulation require that the petitioner submit evidence of a certified LCA at the time of filing. In this matter, the LCA submitted on appeal, identifying [REDACTED] as the work location, was certified almost one month after the petitioner filed the Form I-129. A 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). The petitioner failed to comply with the filing requirements at 8 C.F.R. § 214.2(h)(4)(i)(B). The LCA certified on December 10, 2008 may not be used to support the visa petition in this case, which was filed on November 17, 2008.²

Similarly, even if it were somehow supported by a timely LCA, the claim of employment in [REDACTED] could still not form the basis of eligibility in this matter. As was noted above, the visa petition in this case was filed on November 17, 2008.

The November 25, 2008 contract and work order indicate that the petitioner agreed, on that date, to provide the beneficiary to work in [REDACTED] beginning on the following day. The petitioner's president stated that the work in [REDACTED] was confirmed on December 10, 2008. Whichever

² While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

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

[Italics added]. As 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary, this regulation inherently necessitates the filing of an amended H-1B petition to permit USCIS to perform its regulatory duty to ensure that the new LCA actually supports the H-1B petition filed on behalf of the beneficiary. In addition, as 8 C.F.R. § 103.2(b)(1) requires eligibility to be established at the time of filing, it is factually impossible for an LCA approved by DOL after the filing of an initial H-1B petition to establish eligibility at the time the initial petition was filed. Therefore, contrary to the assertions of counsel, in order for a petitioner to comply with 8 C.F.R. § 103.2(b)(1) and for USCIS to perform its regulatory duties under 20 C.F.R. § 655.705(b), a petitioner must file an amended H-1B petition with USCIS whenever a beneficiary's job location changes such that a new LCA is required to be filed with DOL.

of those dates is the actual date when the accord was reached, it was after the petitioner filed the instant visa petition.

As was noted above, a petitioner is obliged, by regulation and precedent, to show that the visa petition was approvable when it was submitted. An accord reached after submission of the visa petition contributes nothing to the determination that the petitioner had specialty occupation work for the beneficiary to perform when it filed the visa petition.

The evidence pertinent to employment in [REDACTED] does, however, have a contrary effect on the approvability of the instant visa petition. That the petitioner has contractually committed the beneficiary to a long-term project in [REDACTED] convincingly demonstrates that it does not intend to employ him pursuant to the terms of the November 12, 2008 LCA, the only LCA available to support the instant visa petition, which is only approved for employment in [REDACTED]. Again, this constitutes sufficient reason to dismiss the appeal and deny the visa petition. However, notwithstanding that the petitioner appears to have withdrawn the assertion that it would employ the beneficiary in [REDACTED] in accordance with its initial claim, the AAO will continue the analysis of the specialty occupation issue assuming, *arguendo*, that the petitioner would employ the beneficiary consistent with that initial claim. It will address the location issue in more detail below.

The petitioner's president and its senior vice president made clear that the duties of the proffered position consist of web design and development.

The AAO recognizes the Department of Labor's (DOL) *Occupational Outlook Handbook*³ (the *Handbook*) as an authoritative source on the duties and educational requirements of a wide variety of occupations. The *Handbook*'s description of the duties of computer systems analyst positions does not include web development.

The *Handbook* descriptions of positions for web developers are included within the section pertinent to "Computer Network, Systems, and Database Administrators" positions. It states the following about the duties of web developer positions:

Web developers are responsible for the technical aspects of Web site creation. Using software languages and tools, they create applications for the Web. They identify a site's users and oversee its production and implementation. They determine the information that the site will contain and how it will be organized, and may use Web development software to integrate databases and other information systems. Some of these workers may be responsible for the visual appearance of Web sites. Using design software, they create pages that appeal to the tastes of the site's users.

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 online edition.

The AAO finds that the various descriptions of the duties of the proffered position demonstrate that it is a position for a web developer. As to the education and training requirements of web developer positions, the *Handbook* states,

Applicants for . . . web developer positions generally need a bachelor's degree in a computer-related field, but for some positions, related experience and certification may be adequate.

The *Handbook* does not indicate that a minimum of a bachelor's degree or the equivalent in a specific specialty is a minimum requirement for web developer positions. The *Handbook* does not, therefore, support the assertion that the proffered position is a position in a specialty occupation. The record contains no other evidence to suggest that web developer positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty and are specialty occupation positions.

Thus, the petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into web developer positions and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will consider the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As was noted above, the *Handbook* does not support the contention that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence that a professional association of web designers requires a minimum of a bachelor's degree or the equivalent in a specific specialty for entry. The record contains no letters or affidavits from firms or individuals in the petitioner's industry.

In short, the petitioner provided no evidence pertinent to other companies' recruitment and hiring practices and has not, therefore, demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar companies. Consequently, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the criterion of the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner demonstrates that the particular position proffered is so complex or unique that it can be performed only by an individual with a degree.

Although the record contains a description of the proffered position, nothing about that description is sufficient to show that it is unique or sufficiently complex that it would require a minimum of a bachelor's degree or the equivalent in a specific specialty, notwithstanding that other web developer positions do not.

Nothing is inherently unique about designing, developing, and configuring web sites for various platforms using various components and tools, nor has the petitioner demonstrated that those duties are sufficiently complex that they require a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not demonstrated that the proffered position qualifies as a specialty occupation position pursuant to the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Although the petitioner claims to have more than 250 employees, and the record shows that the petitioner has petitioned for 414 current and recent employees, and the petitioner's assertions indicate that a considerable portion of its business consists of web development, the petitioner provided no evidence that it normally requires that its entry-level web developers possess a bachelor's degree or the equivalent in a specific specialty. The petitioner has not, therefore demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO will next consider the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates that 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 duties of the proffered position have only been described in general and generic terms, such that they cannot be contrasted with those of more typical web developer positions, which do not necessarily require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Although the record contains assertions that the proffered position requires a bachelor's degree, no evidence or even argument was provided to demonstrate that, absent a minimum of a bachelor's degree or the equivalent in a specific specialty, a person would not be qualified to design and deploy business intelligence solutions; use software components like Java, J2EE, Web Logic, Web Sphere, Apache, Tomcat, HTML/DHTML, Java Script, XML/XSL and XML; and use tools like Telelogic Doors, Rational Requisite Pro and Rational Rose, for instance.

The petitioner has not demonstrated that 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 petitioner has not, therefore, demonstrated that the proffered

position qualifies as a position in a specialty occupation pursuant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director was correct in his determination that the record before him failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the director's decision to deny the petition shall not be disturbed.

The record suggests additional issues that were not addressed in the decision of denial.

As was noted above, only the first LCA submitted is available to support the visa petition, as the other LCA was certified after the submission of the visa petition. The petitioner, however, has withdrawn its assertion that the beneficiary would work in [REDACTED] the only location for which the first LCA is approved. The petitioner indicated that the beneficiary is now working and will for the foreseeable future work in [REDACTED]. As such, that LCA does not correspond with the work to which the beneficiary would be assigned pursuant to the instant visa petition. As the LCA does not correspond to the visa petition, the visa petition may not be approved. The appeal will be dismissed and the petition will be denied on this additional basis.

Further, 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. Although the petitioner's finance manager provided the beneficiary's proposed daily work schedule, she did not indicate where the beneficiary would work or for how many months. The petitioner has not complied with the requirement of 8 C.F.R. § 214.2(h)(2)(i)(B), and the appeal will be dismissed and the petition denied for this additional reason.

Yet further, in the December 23, 2008 RFE, the service center requested that the petitioner provide the names of each of the businesses where its employees work. This information is relevant to various material considerations, including whether the petitioner is employing its H-1B workers in accordance with H-1B requirements and intends to observe those requirements with respect to the beneficiary's employment. The petitioner did not comply with that request, as it only provided the names of cities and towns, rather than actual businesses.

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 visa petition will be denied on this additional basis.

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

EAC 09 037 51858

Page 14

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.