identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

[redacted]

B2

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 02 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,

p.r. Michael T. Kelly
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a software development and IT solutions business with five employees. It seeks to employ the beneficiary as a programmer analyst 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 concluding that material changes occurred since the petition was filed.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's Notice of Intent to Deny (NOID); (5) the petitioner's response to the NOID; (6) the director's denial letter; and (7) the Form I-290B and brief submitted by counsel, with one supporting document. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue in this matter is whether material changes occurred since the petition was filed such that a new petition should have been submitted.

The petitioner filed the H-1B petition on the beneficiary's behalf on August 1, 2008 requesting that he work as a programmer analyst at the petitioner's offices located at [redacted] from July 29, 2008 to July 28, 2011. The petitioner's Labor Condition Application (LCA) was filed for a programmer analyst to work in San Jose, CA.

The petitioner's support letter dated July 30, 2008, stated that the beneficiary would coordinate changes to design and development as well as be responsible for the project requirements gatherings, design, development and implementation of new functionality by performing the following duties:

- Analyze the business requirement and design *web-based client-server software applications*;
- Write test cases for software system testing and validation procedures;
- Correct errors and defects by making changes in the code design and *interacting with the client to gather requirements*, develop design standards, and assist in project planning;
- Develop, integrate and test enterprise software platforms and projects as well as be involved in the complete software development life cycle;
- Develop test script based on business scenarios and cases for manual testing, test the application *based on the user's needs and business requirement*, and prepare operational data for testing;
- Prepare operational data for testing by using queries using SQL Server and actively participate in weekly meetings;
- Research and analyze project documentation, participate in project reviews and document process improvement as well as use MS Viseo; and
- Prepare operational data for testing by using queries using PL/SQL, developing UNIX Shell Script for scheduled batch processes, and coordinating with the team members in defining test objectives and test plans.

(Emphasis added.) The petitioner stated that it requires at least a bachelor's degree in a related area (without specifying any fields) with relevant work experience for the proffered position.

In its letter, the petitioner also provided an itinerary, which specifically stated that the beneficiary would work at the petitioner's offices for the duration of the petition.

The petitioner also submitted a copy of its Business Tax Certificate, which listed two addresses in San Jose, CA, neither of which is the address where the petitioner stated the beneficiary would work. The petitioner also provided a copy of its offer letter to the beneficiary as well as a contract it has with the beneficiary. Additionally, the petitioner provided copies of its corporation documents and website pages regarding its alleged products.

The petitioner submitted copies of the beneficiary's foreign degrees and certificates, but did not provide a copy of an education evaluation.

On October 7, 2008, the director issued an RFE requesting additional documentation regarding its contracts with clients and the beneficiary, a complete itinerary of services, and, if the beneficiary would work in-house, a detailed description of the in-house project. The director noted that the evidence must show specialty occupation work for the beneficiary with the actual end-client company where the work will ultimately be performed and that a clear contractual path must be shown from the petitioner to the ultimate end-client. Additionally, the director requested additional evidence regarding the petitioner's other H-1B and L-1 employees and other evidence regarding the petitioner's existing business. The director also requested evidence demonstrating that the beneficiary is qualified to perform the duties of a specialty occupation and the beneficiary's current immigration status.

The petitioner responded to the RFE on November 17, 2008. The petitioner stated that the beneficiary will only be working on an in-house project for a proprietary product the petitioner is developing and provided a summary of the product. The petitioner also stated that "[t]his project will be for 1 year with possible extension for the production support and post sales support. The first release of this project will be done on Nov. 30th 2009. Project will start from Dec. 1st 2008." Additionally, the petitioner stated that four other employees would work on the project and that another corporate entity shares the offices with the petitioner, which is called Proactive Technical Services, Inc. The petitioner noted that the petitioner and Proactive Technical Services, Inc. are run by the same management and will be merged together.

Regarding evidence of the beneficiary's current status with another H-1B employer, the petitioner responded as follows: "Please note that there has been an LCA Violation due to lack of work with the previous employer and the beneficiary was unpaid for the period. Hence, we are not able to submit his pay stubs for the period requested."

The petitioner provided a list of its employees for whom it filed H-1B and L-1 petitions. The petitioner noted that the majority of its petitions are still pending or the beneficiaries have yet to start with the petitioner. One of the workers it lists as never having joined,

is listed on the petitioner's organization chart as an employee as well as in its quarterly payroll records. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Additionally, the petitioner submitted copies of its Forms W-2 and its 2006 and 2007 federal tax returns.

The petitioner also submitted a copy of its lease for the offices listed in the Form I-129 covering the period of June 1, 2008 to May 31, 2009. The lease is for 490 square feet of space, even though the petitioner claims to have five workers at that address and that it shares the space with another entity.

Additionally, the petitioner submitted a credential evaluation for the beneficiary, which states that the beneficiary has the U.S. equivalent of a bachelor's degree in Management Information Systems based on a combination of his education and experience.

On February 26, 2009, the director issued a NOID, noting that the petitioner's office space is insufficient for both the petitioner and another entity to have their employees work there. The director also noted that the information regarding the petitioner's alleged proprietary product is verbatim from the website of another company called Claridyne. Although the NOID stated that the petitioner's response must be submitted by March 28, 2009, counsel for the petitioner did not submit a response until March 30, 2009. Therefore, the petitioner's response to the NOID was not timely. However, the director considered the petitioner's response before issuing its decision to deny the petition.

Counsel describes how the petitioner came to be at its current offices as follows:

> As explained earlier, Petitioner was forced to leave the office space at 3150 Almaden Expressway because the original lessor failed to make the lease payments. Petitioner had little time to locate a suitable alternative and had to consider whatever was available at the last minute. Even though this office space was small, Petitioner moved in as this was the best option available at that time. . . . *As this office space is insufficient for Petitioner's needs*, it plans to move to a bigger office once the lease expires in June 09.

(Emphasis added.) Counsel did not explain how the petitioner can fit all of its alleged workers into this small office space until the petitioner finds new premises, or where these workers are actually doing their work, even though it stated that the office space is insufficient.

Counsel also stated that the petitioner and [redacted] entered into a Joint Venture in approximately March 2006, which continued until November 30, 2008 when the two companies divested the stakes they had in each other. The AAO notes that this is in direct conflict to the petitioner's letter dated November 17, 2008, which stated that the petitioner and [redacted] would be merging. Counsel further states that the petitioner

has been the sole user of the workspace at since the two companies divested their interests on November 30, 2008.

Additionally, counsel states that the petitioner has a Master Service Agreement with Inc. dated December 28, 2008, pursuant to which the petitioner will provide development services to Counsel also states that the petitioner and entered into a joint venture agreement dated January 5, 2009. Counsel explains that because of these agreements for joint development, the petitioner and have similar information regarding the products.

Counsel provided a copy of the settlement agreement between an individual named (the person who signed the petitioner's Form I-290B and is listed as the petitioner's current President) and to divest their interests effective November 30, 2008. The person signing as President of , is the same person who was previously listed as President for the petitioner and who signed the petitioner's Form I-129. Additionally, counsel provided a copy of a Settlement and Mutual Release Agreement, which states that Arun Ubale would resign as a director of the petitioner effective October 31, 2008.

Counsel also provided a copy of the Master Service Agreement between the petitioner and which became effective on December 23, 2008, over four months after this petition was filed. According to the copy of the purchase order submitted, which lists the beneficiary by name as a consultant, the engagement period between the petitioner and would not start until May 16, 2009 and was expected to last for 12 months, though was potentially extendable.

The director denied the petitioner on May 5, 2009. The director noted that the description of the beneficiary's duties entailed working on behalf of the petitioner's client(s). The director further found that the petitioner did not demonstrate that it is developing its own in-house product or that the petitioner is conducting business at the address provided in the petition. Additionally, the director noted that the agreements with were all dated after the date the present petition was filed and that work would not start until May 16, 2009. Therefore, the petitioner failed to demonstrate that it had work for the beneficiary to perform at the time the petition was filed.

The director specifically found that the following two material changes occurred since the petition was filed: (1) the support letter indicated that the beneficiary's duties would entail working on behalf of the petitioner's client(s), but the petitioner stated in response to the RFE that the beneficiary would only work on an in-house project; and (2) in response to the NOID, the petitioner again changed the beneficiary's work by indicating that the beneficiary would work on behalf of

The petitioner filed this appeal on June 5, 2009. On appeal, counsel for the petitioner argues that the petitioner:

> [h]ad an on going contractual relationship with prior to the dates of the MSA, PO or the Agreement. This relationship was based upon an oral agreement

> that the parties had amongst themselves pursuant to which they [sic] Petitioner was providing IT services to from its main location. The oral agreements were subsequently formalized when the parties executed the MSA and the Agreement. Thus, till such time that the Master Services Agreement and the Joint Venture Agreement with were executed, there was an existing oral agreement between Petitioner and pursuant to which Petitioner was providing IT Services to via the Beneficiary. This is why an LCA was submitted for the main location.

Counsel does not provide any evidence that an oral agreement existed between the petitioner and prior to the written agreements pursuant to which the beneficiary was working. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Additionally, counsel argues on appeal that it is not required to provide copies of contracts or an itinerary for services. Counsel cites to a internal memorandum to support its assertion that the itinerary requirement can be met by providing a general statement of the proposed or possible employment.

With respect to the unpublished and internal opinions can not be cited as legal authority and they are not precedent or binding on USCIS as a matter of law. *See* 8 C.F.R. § 103.3(c) (types of decisions that are precedent decisions binding on all USCIS officers). Courts have consistently supported this position. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (holding that legacy Immigration and Naturalization Serviced (INS) memoranda merely articulate internal guidelines for the agency's personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely"); *see also Noel v. Chapman*, 508 F.2d 1023 (2nd Cir. 1975) (finding that policy memoranda to legacy INS district directors regarding voluntary extended departure determinations to be "general statements of policy"); *Prokopenko v. Ashcroft*, 372 F.3d 941, 944 (8th Cir. 2004) (describing a legacy INS Operating Policies and Procedures Memorandum (OPPM) as an "internal agency memorandum," "doubtful" of conferring substantive legal benefits upon aliens or binding the INS); *Romeiro de Silva v. Smith*, 773 F.2d 1021, 1025 (9th Cir. 1985) (describing an INS Operations Instruction (OI) as an "internal directive not having the force and effect of law"). Regardless, the qualifies its guidance as being subject to the exercise of the adjudicating officer's discretion. This is evident in the memo's statements that the itinerary requirement has been met "[a]s long as the officer is convinced of the bona fides of the petitioner's intentions with respect to the alien's employment," and that "[s]ervice officers are encouraged to use discretion in determining whether the petitioner has met the burden of establishing that it has an actual employment opportunity for the alien."

In addition, the Aytes memo was written to provide guidance to agency officers in situations where the documentation submitted by the petitioner indicates that the petitioner is the actual employer and not a contractor or agent. Regardless, the Aytes memo must not be interpreted as countermanding or contradicting the regulations authorizing USCIS to request additional documentation. Under 8 C.F.R. § 103.2(b)(8)(ii), "if all required initial evidence is not submitted with the application or petition *or does not demonstrate eligibility*, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified time as determined by USCIS." (Emphasis added). Title 8 C.F.R. § 214.2(h)(9)(i) also states, "The director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist his or her adjudication."

Therefore, under the regulations, USCIS has broad discretionary authority to require additional documentation, especially in a case, like this, where the petitioner has not demonstrated eligibility at the time of filing the petition or where it is needed for a material line of inquiry. In a situation where the beneficiary is likely to be contracted out to a third-party worksite, the petitioner must provide detailed evidence with respect to the contractual relationship between the petitioner, its clients, and any other third-party end users, in order to establish which entity will actually control the work to be performed by the beneficiary. As discussed above, the petitioner appears to be a contractor and has not provided sufficient evidence to demonstrate that it will employ the beneficiary at the petitioner's offices for the duration of the petition.

Counsel also responds to the director's concern that a company called , Inc. signed the petitioner's lease by submitting a document evidencing that s doing business as The AAO finds that this evidence is sufficient to demonstrate that the petitioner signed the lease.

As discussed previously, the petition was filed on August 1, 2008. The petitioner's agreement with was not executed until December 23, 2008 and the Purchase Order naming the beneficiary stated that the beneficiary's work on the project with would not begin until May 16, 2009. The petitioner did not submit evidence to support counsel's assertions that the petitioner and had an oral agreement that existed at the time the petition was filed and pursuant to which the beneficiary would work. Additionally, given that the petitioner's offices are too small to employ six workers (including the beneficiary) on a full-time basis and that the proffered duties include working on projects for the petitioner's client(s), the petitioner failed to demonstrate that it intended to have the beneficiary work at its offices on the project for at the time the petition was filed for the duration of the petition and that at the petition's filing, it had secured any work for the beneficiary to perform for . Therefore, the AAO affirms the director's finding that material changes occurred since the petition was filed. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Beyond the decision of the director, because it is not clear that the petitioner had confirmed the project to which the beneficiary would be assigned at the time the petition was filed, the AAO finds that the petitioner did not establish eligibility at the time the petition was filed. The

petitioner cannot assert that it will pay the beneficiary the prevailing wage for the occupation and geographical area where the beneficiary will be employed as listed in the submitted LCA if the petitioner does not yet know what the beneficiary's duties will be or where the beneficiary will perform the work at the time the petition was filed. As such, the petitioner cannot establish that it has complied or will comply with the requirements of § 212(n)(1)(A)(i) of the Act, 8 U.S.C. § 1182(n)(1)(A)(i), as of the time the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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).

Moreover, beyond the decision of the director, the petitioner has failed to demonstrate that the proffered position is a specialty occupation. For this reason also, the petition must be denied.

As discussed previously, the proffered duties described in the petitioner's support letter entail work on behalf of the petitioner's client(s).

The AAO notes that, as recognized by the court in *Defensor v. Meissner*, 201 F.3d 384, 387-388 (5th Cir. 2000), 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 INS 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. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. *Id.* Therefore, the petitioner would have to provide additional documentation regarding the work the beneficiary would perform on behalf of other entities covering the duration of the petition, which could include copies of contracts, statements of work, etc.

However, even if the petitioner could demonstrate that the beneficiary would work as a programmer analyst at the petitioner's offices for the duration of the petition, the 2010-11 online edition of the U.S. Department of Labor's *Occupational Outlook Handbook's* (*Handbook)* section on computer systems analysts reads, in pertinent part:

> In some organizations, programmer-analysts design and update the software that runs a computer. They also create custom applications tailored to their organization's tasks. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas. (A separate section on computer software engineers and computer programmers appears elsewhere in the Handbook.) As this dual proficiency becomes more common, analysts are increasingly working with databases, object-oriented programming languages, client–server applications, and multimedia and Internet technology.
>
> * * *
>
> [W]hen hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people

> with graduate degrees are preferred. For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.
>
> Despite the preference for technical degrees, however, people who have degrees in other areas may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation. . . .

Therefore, the *Handbook's* information on educational requirements in the programmer analyst occupation indicates that a bachelor's or higher degree, or the equivalent, in a specific specialty is not a normal minimum entry requirement for this occupational category. Rather, the occupation accommodates a wide spectrum of educational credentials. This is in accordance with the petitioner's own stated requirements for the proffered position that at least a bachelor's degree is required without indicating that the degree must be in a *specific specialty.*

As evident above, the information in the *Handbook* does not indicate that programmer analyst positions normally require at least a bachelor's degree in a specific specialty. While the *Handbook* indicates that a bachelor's degree level of education in a specific specialty may be preferred for particular positions, insufficient evidence was provided regarding the particular position here proffered to demonstrate requirements for the theoretical and practical application of such a level of highly specialized computer-related knowledge.

Therefore, even if the petitioner could demonstrate that it has sufficient work for the beneficiary to be employed as a programmer analyst for the duration of the petition, the petitioner would still have to submit additional evidence to prove that the proffered position is a specialty occupation in accordance with the discussion above.

Also beyond the decision of the director, the AAO finds that the petitioner did not submit sufficient documentation to show that the beneficiary qualifies to perform services in any specialty occupation requiring a degree in management information systems or a related field under 8 C.F.R. § 214.2(h)(4)(iii)(C).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

> (*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an

accredited college or university;

(*3*) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(*4*) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must

> be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:
>
> (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
>
> (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
>
> (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
>
> (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
>
> (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary's foreign degree has not been determined to be the equivalent of a U.S. degree in management information systems or a related field. Therefore, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), in order for the beneficiary to qualify for a specialty occupation requiring a degree in management information systems or a related field, the record must demonstrate that he has education, specialized training, and/or progressively responsible experience equivalent to a U.S. baccalaureate or higher degree in management information systems as well as recognition of his expertise through progressively responsible positions directly related to this specialty.

In response to the RFE, the petitioner submitted a credential evaluation written by [redacted] which states that the beneficiary has the U.S. equivalent of a Bachelor's degree in Management Information Systems (MIS) from a regionally accredited university through a combination of his education and experience. Although counsel submitted a letter from the Dean of the College of Sciences and Technology at Western Washington University, this letter only states that the university and computer science department are fully accredited and that [redacted] has the power to grant academic credit based on assessing students' work. The petitioner did not submit any evidence that [redacted] has the authority to grant college-level credit for training or experience, nor was evidence submitted that Western Washington University has a program for granting credit based on an individual's training and/or work experience, let alone that this university has such a program for the MIS specialty. The AAO therefore finds that the evaluation from [redacted], together with the supporting documentation submitted, does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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