

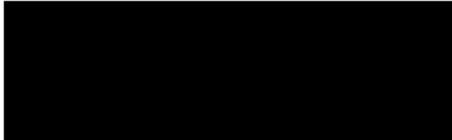
Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

PUBLIC COPY



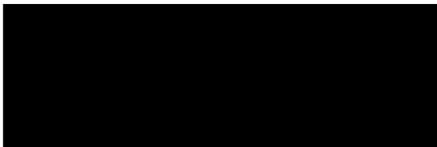
82

FILE: [REDACTED] Office: VERMONT Date: MAR 02 2011

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:



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. Perry
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 the petitioner stated that it is a software development and computer consulting service with 22 employees. To employ the beneficiary in what it designates as a programmer 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 appeal is filed to contest both of the independent grounds upon which the director denied this petition, specifically, the director's separate determinations that the petitioner (1) failed to establish that it would employ the beneficiary in a specialty occupation position, and (2) failed to provide the itinerary requested by 8 C.F.R. § 214.2(h)(2)(i)(B) and requested by the service center.

The AAO bases its decision upon its review of the entire record of proceeding, 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 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. 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The LCA submitted to support the visa petition is valid for employment in [REDACTED]
The visa petition states that the beneficiary would work at the petitioner’s address [REDACTED]

With the visa petition, counsel submitted evidence that the beneficiary has a Bachelor of Science (general) degree from Kurukshetra University in India, and a master’s degree in industrial chemistry from Guru Jambheshwar University, also in India.

Counsel also provided a letter, dated April 1, 2009, from the petitioner’s president, who stated that the proffered position qualifies as a position in a specialty occupation because it requires both theoretical and practical application of a body of highly specialized knowledge and attainment of a minimum of a bachelor’s degree or the equivalent in a specific specialty. That letter did not otherwise provide a description of the duties of the proffered position.

The petitioner’s president also stated:

Due to the high level of professional responsibility inherent to the instant position, our minimum requirement for this position is a comprehensive understanding of software programming and development by virtue of a bachelor’s degree with concentration in computers, electronics/electrical, communications, business & computers or coupled with experience in computers.

Although that requirement is phrased somewhat ambiguously, the petitioner’s president appeared to state that an adequate educational qualification for the proffered position would be (1) a bachelor’s degree with a concentration in computers, (2) a bachelor’s degree with a concentration in electronics and/or electrical engineering, (3) a bachelor’s degree in communications, (4) a bachelor’s degree in business and computers, or (5) a bachelor’s degree in any other subject, if the applicant has computer experience. The AAO notes that, if that interpretation is correct, then the petitioner’s president has indicated that the proffered position does not require a minimum of a bachelor’s degree or the equivalent in a specific specialty, as computers, electronics/electrical, communications, and business & computers, does not describe a single field of study. Such a broad range of acceptable academic concentrations indicates that the proffered position is not one that would require the theoretical and

practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. That 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.

The petitioner's president stated that the beneficiary's Bachelor of Science degree had a concentration in physics, electronics, and computer science. The AAO notes that the record contains no evidence to corroborate that assertion, and the petitioner's president's basis for making that statement is unknown to the AAO. The beneficiary's diploma states that he received a "Bachelor of Science (General)" degree.

Although the statements by the petitioner are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner's president indicated that the beneficiary's education, taken together with his employment experience, qualifies him to hold the proffered position. He listed the various jobs the beneficiary has held and provided an evaluation, dated March 30, 2008, from Morningside Evaluation Service.

The evaluation states that the beneficiary's education is equivalent to a bachelor of science in chemistry awarded by a U.S. institution of higher learning. The evaluation further states that the beneficiary's employment experience is equivalent to an additional three years of university-level training in computer information systems, and that his education and experience, taken together, are equivalent to a bachelor of science degree in computer information systems from a U.S. institution. The AAO notes that the evaluation contains no indication that the evaluator is authorized to award college credit for experience.

Because the evidence did not demonstrate that the visa petition was approvable, the service center, on June 12, 2009, issued an RFE in this matter. The service center requested, *inter alia*, an itinerary showing where the beneficiary would work for what period and performing what duties. The service center also requested that, for each location, the petitioner state (1) the name of the project to which the beneficiary would be assigned; (2) whether the beneficiary would be provided to the end-user through an intermediary and the vendor's name, if applicable; (3) the identity of the person who would supervise the beneficiary's work at that site; (4) whether the organization to which the beneficiary would be assigned is able to assign the beneficiary to a different end-user; and contact information for the end-user.

Further, the service center requested that the petitioner provide a letter from each end-user describing the duties to which it would assign the beneficiary or, if the beneficiary would be employed on the petitioner's own project, (1) a description of the project, (2) the length of time the beneficiary is expected to work on the project, (3) a list of the names of team members on the project identified by title and duties, and (4) invoices showing development of the project or other evidence that the petitioner normally engages in developing its own software projects.

In response, counsel submitted a letter, dated July 14, 2009, in which he stated, “. . . [T]he petitioner . . . allocates work schedules of the employee to in[-]house projects and outside projects.” As to the work to be assigned to the beneficiary, counsel stated:

[The petitioner] require[s] the services of the beneficiary to design and develop and implement information systems applications to streamline their training and software development activities and not involved in any consulting or work on any client's projects.

Counsel further stated, “. . . the beneficiary will perform forty hours per week for the requested period from October 1, 2009 to September 24, 2011 and he will perform those services at [REDACTED]. The beneficiary will directly report to [the petitioner's president].”

Counsel's basis for the statement that the beneficiary would “design and develop and implement information systems applications to streamline [the petitioner's] training and software development activities.” is unclear. The RFE requested that the petitioner provide evidence pertinent to the project to which the beneficiary would be assigned. The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof.

Counsel slightly amended the asserted minimum educational requirement for the proffered position, stating that it requires, “Bachelor's Degree in Science or Engineering in electronics, communications, business & computers[,] or coupled with experience in computers.”

According to counsel's amended assertion, one might qualify to hold the proffered position with either (1) a bachelor's degree in science, (2) a bachelor's degree in electronics engineering, (3) a bachelor's degree in communications, (4) a bachelor's degree in business and computers, or (5) a bachelor's degree in any other subject coupled with experience in computers. Again, the AAO notes that science, electronics engineering, communications, and business & computers do not delineate a specific specialty.

Counsel reiterated the assertion that the beneficiary's bachelor's degree included “[a] concentration in Physics, Electronics, and Computer Science,” but, again, provided no evidence of that assertion. Counsel cited the evaluation provided for the proposition that the beneficiary's education and experience, considered together, are equivalent to a bachelor's degree in computer information systems from a U.S. institution.

The director denied the visa petition on August 3, 2009 finding, as was noted above, that the petitioner failed to demonstrate that the beneficiary would work in a specialty occupation and failed to provide the itinerary that is required by the regulations and was explicitly requested in the RFE.

On appeal, counsel stated that the petitioner had complied with the itinerary requirement. He further stated:

[The petitioner] not only performs consulting services for their clients at client work place to meet their client's computer needs but also develops projects in-house as plug and play components for different customers[, b]esides providing extensive computer training on various applications for more than ten years.

In addition, counsel asserted:

The petitioner, further, submits that the proposed job duties as described in the petitioner's support letter that was submitted with the petition demonstrates that the performance of the duties requires an individual who can apply theoretical and practical application of highly specialized knowledge, in particular, in information technology by virtue of his or her academic level training or coupled with experience in computers or related field. Certainly, the person with high school or associate level training is not equipped to understand the complex nature of the application to perform the proposed job duties.

As was observed above, the wide range of degrees that the petitioner states would qualify one for the proffered position, and the assertion that a degree in any field would qualify one with experience in computers, constitute an admission that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty and is not a position in a specialty occupation.

Further, the assertion that the petitioner, who provides on-site services to other companies, would employ the beneficiary at its own location throughout the period of requested employment is very questionable. Further still, although the service center requested detailed information about any in-house projects upon which the beneficiary would work, including a list of the names of team members on the project identified by title and duties and invoices showing development of the project or other evidence that the petitioner normally engages in developing its own software projects, counsel merely stated that the petitioner develops in-house plug and play components, and the petitioner's president provided even less information.

The AAO need not, however, rely on either of those bases in determining that the proffered position has not been shown to constitute a position in a specialty occupation. The AAO will assume, *arguendo*, that the beneficiary would work at the beneficiary's location throughout the period of requested employment, and would work either on streamlining software applications pertinent to the petitioner's training activities or on other, unidentified, in-house projects.

The petitioner designates the proffered position as a programmer analyst position. Counsel, in argument on appeal, relied on the petitioner's president's April 1, 2009 letter to demonstrate that the position requires a bachelor's degree.

That letter did not include a description of the proffered position's duties. The only portion of that letter that peripherally addresses the duties of the proffered position is the petitioner's president's conclusory assertion that:

[The person in the proffered position] applies both theoretical and practical application of a body of highly specialized knowledge and attainment of bachelor's or master's degree in the specific specialty (or its equivalent), i.e. science or engineering with emphasis on computers, electronics, communications, business & computers, etc. as a minimum entry into the occupation in the United States.

The conclusory assertion that the proffered position qualifies as a position in a specialty occupation pursuant to section 214(i)(1) of the Act, however, is insufficient. The petitioner is obliged to provide evidence on that point so that USCIS can make that determination. In the instant case, the petitioner stated that the beneficiary would streamline the petitioner's training applications, but provided no information from which the AAO can determine the complexity and substantive knowledge required by the duties of the proffered position. Counsel implied that the beneficiary might also develop in-house projects to be provided to other companies or provide computer training, but the record contains no evidence of the substantive nature or complexity of those duties or evidence that the petitioner actually produces and sells software, notwithstanding that such evidence was requested, if applicable, in the RFE.

The petitioner designates the proffered position a programmer analyst position. To determine whether a particular job qualifies as a specialty occupation position, however, the AAO does not solely rely on the job title. Critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform for the entity or entities ultimately determining the work's content. The evidence submitted pertinent to the duties of the proffered position indicates only that the beneficiary would assist in developing computer programs. The record contains no evidence of the complexity of the beneficiary's involvement in the development of those programs.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ That the proffered position even qualifies as a programmer analyst position has not been demonstrated, but only alleged. The abstract descriptions of the duties of the position are insufficient to demonstrate the substantive nature of those duties. However, the AAO will assume, *arguendo*, that the proffered position qualifies as a programmer analyst position.

The *Handbook* discusses programmer analyst positions in the section entitled Computer Systems Analysts. It describes the educational requirements of computer systems analyst positions, including programmer analyst positions, as follows:

When hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with

¹ 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 edition available online, accessed January 24, 2011.

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.

A preference for a bachelor's degree is not a requirement. Further, "a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences" does not describe a specific specialty, as computer science, information science, applied mathematics, engineering, and the physical sciences are not one specific field. Neither that passage nor any other evidence in the record suggests that programmer analyst positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position 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).

The petitioner provided no evidence pertinent to the recruitment and hiring practices of other firms in its industry. Thus, the petitioner has not 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 organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first alternate prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO finds that the petitioner has failed to provide any evidence developing the complexity or uniqueness of the proffered position as a factor for consideration. Rather, the petitioner limits its descriptions of the position to generalized statements that do not convey that the proffered position is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty. Thus, the petitioner has not satisfied the second alternate prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence pertinent to anyone the petitioner ever previously hired anyone to fill the proffered position, and 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).

Next, the AAO finds that the evidence in the record of proceeding fails to delineate the particular duties that would engage the beneficiary in the proffered position, and failed to link those duties to a requirement for possession of knowledge of a particular educational level in a body of highly specialized knowledge in a specific specialty. Accordingly, the petitioner has failed to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the AAO finds that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position pursuant to any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The appeal will be dismissed and the visa petition denied on this basis.

The remaining basis for the director's decision was his finding that the petitioner failed to provide a required itinerary. The AAO notes that, in the analysis above, it assumed, without finding, that the petitioner would employ the beneficiary at its offices throughout the period of requested employment. In fact, however, the petitioner has not demonstrated that fact, which appears to be contraindicated by the nature of the petitioner's business. The petitioner was obliged to demonstrate either that it would employ the beneficiary exclusively in the area of [REDACTED] or to provide that itinerary. Having failed to demonstrate the former, it was obliged, by 8 C.F.R. § 214.2(h)(2)(i)(B), to provide the itinerary. The petitioner has not complied with that requirement, and the appeal will be dismissed and the petition denied for this additional reason. The petitioner's failure to provide an itinerary raises another issue, however, in addition to failure to comply with the requirement of 8 C.F.R. § 214.2(h)(2)(i)(B).

Rather than merely denying the visa petition because of the petitioner's failure to comply with the requirement of 8 C.F.R. § 214.2(h)(2)(i)(B) the service center requested, in the November 4, 2008 request for evidence, that the petitioner "Submit a detailed itinerary of the work sites the beneficiary is to be assigned to, to include specific dates, locations, and clients that the beneficiary will be servicing." The petitioner did not comply with that request.

Even if the petitioner were not compelled by 8 C.F.R. § 214.2(h)(2)(i)(B) to provide an itinerary as part of the initial evidence in this matter, the regulations provide the 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 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 proceeding 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 claims that it would employ the beneficiary exclusively at its own offices and that it had H-1B caliber work for the beneficiary for the period of employment requested in the petition.

Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Here, in addition to being required initial evidence, as the detailed itinerary was material to a determination of whether the work to be performed by the beneficiary would be in a specialty occupation, the petitioner's failure to provide this specifically requested evidence precluded a material line of inquiry. As such, the petition must be denied for this additional reason.

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

In the RFE, the service center requested that, if the petitioner was claiming that the beneficiary would work on in-house projects producing software, it provide invoices showing that it actually produces and sells such software. On appeal, counsel asserted that the petitioner "develops projects in-house as plug and play components for different customers," and implied that the beneficiary might perform such work, but did not provide the requested invoices. That evidence was relevant to the material issue of whether the petitioner would employ the beneficiary at its own location, as claimed, and whether it has work for the beneficiary to perform at all.

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 denied on this additional basis.

Further, the petitioner is obliged to demonstrate that the LCA submitted is valid for all of the locations at which the beneficiary would work. Having failed to demonstrate that it would employ the beneficiary exclusively at its own offices, or exclusively in ██████████, or exclusively in that area, the petitioner has not demonstrated that the LCA is valid for all of the work locations to which it would assign the beneficiary. The appeal will be dismissed and the petition will be denied on this additional basis.

Further, the proffered position is deemed a programmer analyst position. This suggests that it is intimately related to computer programming. If it requires a bachelor's degree in a specific specialty, therefore, it would likely require a degree very closely related to computer programming.

Diplomas provided show that the beneficiary's degrees are a "Bachelor of Science (General)" and a master's degree in industrial chemistry. Although the petitioner's president stated that the beneficiary's bachelor's degree included a concentration in "Physics, Electronics, Computer Science," the record contains no evidence to corroborate that assertion.

The evaluation submitted states that the beneficiary's education and employment experience, considered together, are equivalent to a bachelor's degree in computer information systems. However, if the petitioner is relying on the beneficiary's education and experience, considered together, to show that the beneficiary has the equivalent of a minimum of a bachelor's degree or the equivalent in a specific specialty, 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) requires that the petitioner provide 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. The record contains no indication that the credential evaluator who provided the March 30, 2008 evaluation has such authority at any such college or university.

In the instant visa category, however, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. The AAO observes, though, that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that specific specialty*. An examination of the evidence in the record as currently constituted suggests that, if the proffered position were shown to require a minimum of a bachelor's degree or the equivalent in a specific specialty closely related to computers, the evidence in the record as currently constituted would be insufficient to show that the beneficiary qualifies for the proffered position.

A 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).

The petition will be denied for all of the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

██████████
Page 13

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.