

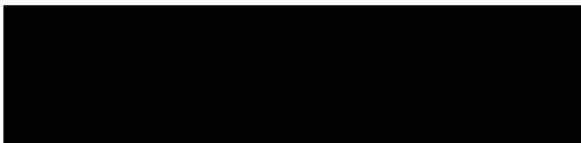
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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services



D<sub>2</sub>

DATE: OCT 03 2011

Office: VERMONT SERVICE CENTER

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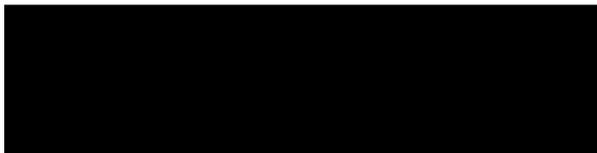


IN RE: Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:

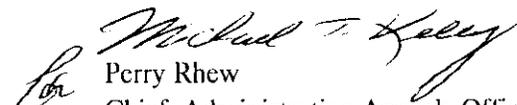


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$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,

  
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.

The petitioner has retained two different attorneys during the pendency of the instant visa petition. A Form G-28 Notice of Entry of Appearance submitted with the visa petition indicates that the petitioner was then represented by [REDACTED]. The appeal in this case was accompanied by a Form G-28 that indicates that the petitioner is now represented by an attorney with an Atlanta, Georgia firm. All representations will be considered, but today's decision will be provided only to the petitioner and to the petitioner's current attorney of record.

On the Form I-129 visa petition the petitioner stated that it is an IT (Information Technology) software development firm with 45 employees. To employ the beneficiary in what it designates as a mechanical engineer/systems administrator position, the petitioner endeavors to classify the beneficiary 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 each of the independent grounds upon which the director denied this petition, specifically, the director's separate determinations that the petitioner failed (1) to establish that the petitioner will employ the beneficiary in a specialty occupation position, (2) to provide a required itinerary, and (3) to establish that the labor condition application (LCA) submitted to support the visa petition is valid for all of the locations where the beneficiary would work.

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 two requests for additional evidence (RFEs); (3) the responses to the RFEs; (4) the director's denial letter; and (5) the Form I-290B and present counsel's brief and attached exhibits 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 (5<sup>th</sup> 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 petitioner’s office address is on [REDACTED] On the visa petition, the petitioner indicated that the beneficiary would work at the petitioner’s office.

With the visa petition, previous counsel provided a letter, dated December 2, 2008, from the petitioner’s president, which includes the following description of the duties of the proffered position:

- *Coordinate for installation, operation, maintenance, administration and repair to ensure machines and equipments are installed and functioning according to specifications.*
- *Design and draw applications using Computer Aided Design (CAD) tools and technology.*
- *Design Mechanical components and support processes for ink-jet systems using 3D CAD software tools utilizing test results data and research conclusions.*
- *Maintain and administer computer networks and related computer environments including hardware, systems software, applications software, and all configurations.*
- *Design, configure and test computer hardware, networking software and operating system software.*

The petitioner's president's letter further stated:

To perform these duties, the necessary technical background is typically acquired through a bachelor's degree in Mechanical Engineering, Computer Science, Math, or other related field. Hence, [REDACTED] hires only candidates that possess [sic] at a minimum of bachelor's degree, or its equivalent, in Engineering, or a related field.

This is an appropriate time for the AAO to note that assertions by the petitioner and/or its counsel as to the educational or educational-equivalency requirements for performance of the proffered position merit weight only to the extent that they are supported by the evidence in the record of proceeding. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)). 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 Obaighena*, 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). As will be reflected in this decision's analysis below, to the extent that they are described and documented in this record of proceeding, neither the proposed duties nor the proffered position which they comprise substantiate the claim that the proffered position merits classification as a specialty occupation as that term is defined at section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii). Accordingly, the AAO appeal be dismissed and the petition will be denied.

The AAO next observes that the range of acceptable majors or academic concentrations specified in the president's letter - "mechanical engineering, computer science, math, or a related field" - is not indicative of a need for at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty to be theoretically and practically applied to perform the proffered position, as required for specialty-occupation qualification by section 214(i)(1) of the Act and its implementing regulations at 8 C.F.R. § 214.2(h). The range is too wide to indicate a common or closely connected body of knowledge. Thus, the petitioner's president's assertions about the educational requirements of the proffered position actually indicate that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty and therefore is not a specialty occupation position. This, in itself, is a sufficient reason to dismiss the appeal and to deny the visa petition, and the AAO so finds. The AAO will, however, continue its analysis, in order to reveal other evidentiary deficiencies in the record of proceeding.

Because the evidence submitted with the visa petition was insufficient to show that the petition is approvable, the service center, on March 24, 2009, issued an RFE in this matter. In the RFE, the service center noted, in part, that the petitioner is in the business of providing its workers to other companies to work on their projects, and asked the petitioner to provide, *inter alia*, (1) an itinerary of the beneficiary's prospective employment including dates, locations, and clients; and (2) a copy of the contract with the end-user of the beneficiary's services or a letter from the end-user stating the duties the beneficiary would perform. The service center stipulated that the end-user contract or letter must state, in addition to the duties of the position, its requirements for the position and contact

information for a representative of the end-user. The service center also stated that, if the petitioner did not have a contract with the end-user, it must include the succession of contracts with intermediaries showing the attenuated contractual connection between the petitioner and the end-user.

The RFE also stated that, if, on the other hand, the beneficiary would be employed on an in-house project, the petitioner should provide (1) evidence describing that project; (2) the length of time the beneficiary worked and would continue to work on that project; (3) the names, titles, and duties of team members assigned to that project; and (4) invoices or other evidence showing that the petitioner normally engages in software development.

In response, counsel submitted an offer-of-employment letter from the petitioner to the beneficiary, dated June 5, 2008, signed by the petitioner's president and countersigned by the beneficiary. In a paragraph headed, "Responsibilities," the letter described the asserted systems administrator duties of the proffered position. The last sentence of that paragraph reads, "These services will be provided at locations designed [sic] by [the petitioner], *and will include* the offices of [the petitioner's] clients." [Emphasis supplied.] In an addendum to the letter, the beneficiary is referred to repeatedly as "Consultant." That addendum states:

Consultant agree that for a period of one (1) year from the date of Consultant is introduced to Client/partner/vendor/ or from the date of the termination of this agreement with [the petitioner] whichever occurs later. Consultant shall not Provide or solicit or attempt to provide, or accepts offer or accepts to provide services or discuss any compensation/rate issues directly or indirectly, without consent of [the petitioner], to any [petitioner's] Client, vendor or [petitioner's] partner to whom Consultant is introduced.

[Verbatim from the original.]

The letter and addendum make plain that the petitioner intends to provide the beneficiary to work for other companies at their locations on their projects.

Because the evidence submitted in response to the March 2009 RFE was still insufficient to show that the visa petition was approvable, the service center, on February 17, 2010, issued a second RFE in this matter. The service center again asked that the petitioner provide an itinerary stating where, when, and for whom the beneficiary would work. The service center also asked that, if the petitioner planned that the beneficiary would work at more than one location during the period of requested employment, it provide a letter from each end-user of the beneficiary's services stating: (1) the name of the project to which the beneficiary was assigned; (2) the title and duties of the beneficiary's position; (3) the contracted employment dates; (4) whether an intermediary vendor provided the beneficiary's services to the end-user; (5) the name of the intermediary vendor, if applicable; (6) the contact information from the end-client with the name of an individual, address, and telephone number where the contact can be reached; (7) the name, title and contact information for the person who primarily supervised the beneficiary's work at his remote location; and (8)

whether that work site was permitted, if it wished, to assign the beneficiary to work for another company.

The service center again added that, if the beneficiary worked or would work on the petitioner's own in-house project, the petitioner should submit (1) evidence describing that project; (2) the length of time the beneficiary worked and would continue to work on that project, (3) the names, titles, and duties of team members assigned to that project, and (4) invoices or other evidence showing that the petitioner normally engages in software development.

In response to this second RFE, the petitioner's previous counsel submitted a letter, dated April 1, 2010, from the petitioner's president. That letter reiterated the description of the beneficiary's job duties previously provided.

The petitioner's president further stated:

The position does not require traveling to, working at, or relocating to client work sites in order to perform the duties. The Mechanical Engineer/System Administrator in our company works full-time at our company offices performing the duties listed above for our company within our company. The Mechanical Engineer/Systems Administrator can also provide support for our consultants that are placed in client sites, however, the Mechanical Engineer/Systems Administrator position itself is located at our company offices . . . as stated on the [visa petition] and LCA.

Previous counsel also submitted her own letter, dated April 1, 2010. In it, she stated, "[T]he Petitioner has clearly and unequivocally stated in the H1B petition that the Beneficiary will be working at a single location in Herndon, Virginia."

The director denied the visa petition on April 27, 2010 finding, as was noted above, that the petitioner had not demonstrated that the petitioner would employ the beneficiary in a specialty occupation, had not provided the required itinerary, and had not demonstrated that the LCA submitted to support the visa petition was valid for all of the locations where the beneficiary would work.

On appeal, present counsel states that no itinerary is required, as the beneficiary would work exclusively at the petitioner's Herndon location. Counsel acknowledges that most of the petitioner's workers perform their duties at clients' sites, and that the petitioner has no in-house projects. He states, however, that not all of the petitioner's workers are at other sites, as the petitioner also offers various classes. Six of those classes are in computer applications, Cognos, Informatica, Oracle PL/SQL, C# and ASP.Net, and Microsoft Sharepoint. The remaining class is a résumé writing workshop. Counsel does not suggest that the beneficiary would teach any of these classes, but asserts that he would maintain the computer systems that the classes require, as well as the petitioner's remaining systems architecture. Counsel does not assert that the beneficiary would have any other duties. Counsel does not address the fact that the aforementioned beneficiary's employment

letter directly contradicts counsel's assertion that the beneficiary would work at the petitioner's office, rather than at client locations.

Also on appeal, counsel states that the industry-wide educational requirement for performing those duties is a minimum of a bachelor's degree in computer science, computer engineering, management information systems, or a related area. Counsel cites the *Online Wage Library (OWL)* Internet site, section 15-1071.00, which addresses Network and Computer Systems Administrators, as evidence in support of that assertion.

The AAO notes that the beneficiary does not have a degree in any of the areas counsel listed, but in mechanical engineering. The AAO further notes that counsel's assertion constitutes a substantial revision of the educational requirements previously provided in the petitioner's president's December 2, 2008 letter, which stated that the proffered position requires a bachelor's degree in Mechanical Engineering, Computer Science, Math, or other related field.

Further still, OWL indicates that Network and Computer Systems Administrator positions are in Job Zone 4, which means that most such positions require a bachelor's degree, but that some do not. Further, demonstrating that the proffered position requires a bachelor's degree would be insufficient; the petitioner is obliged to demonstrate that the proffered position requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*.

As will now be discussed, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

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.<sup>1</sup> The *Handbook* describes the duties of Computer Network, Systems, and Database Administrators positions as follows:

*Network and computer systems administrators* design, install, and support an organization's computer systems. They are responsible for LANs, WANs, network segments, and Internet and intranet systems. They work in a variety of environments, including large corporations, small businesses, and government organizations. They install and maintain network hardware and software, analyze problems, and monitor networks to ensure their availability to users. These workers gather data to evaluate a system's performance, identify user needs, and determine system and network requirements.

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<sup>1</sup> 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.

Systems administrators are responsible for maintaining system efficiency. They ensure that the design of an organization's computer system allows all of the components, including computers, the network, and software, to work properly together. Administrators also troubleshoot problems reported by users and by automated network monitoring systems and make recommendations for future system upgrades. Many of these workers are also responsible for maintaining network and system security.

Counsel appears to have abandoned the assertion, made in the petitioner's president's letter of December 2, 2008, that the beneficiary would design Inkjet components. Further, the record contains no evidence to corroborate the assertion that the petitioner designs and produces Inkjet components. Counsel also appears to have abandoned the assertion that the beneficiary would "design and draw applications using Computer Aided Design (CAD) tools and technology."

The duties of the proffered position as described by the petitioner's president include coordinating the installation, operation, maintenance, administration and repair of equipment and machines and maintaining and administering computer networks and related computer environments including hardware, systems software, applications software, and all configurations. The duties described by counsel are limited to maintaining computer systems and systems architecture.

The petitioner is an IT software development firm, which is clearly a computer-intensive business, and was established in 2000. No reason exists to believe that it does not yet have a computer system in its office and requires that one be designed and installed. The duties of the proffered position pertinent to maintenance of the system, however, are consistent with the *Handbook* description of the duties of a network and computer system administrator. The AAO finds that the proffered position is a network and computer system administrator position as described in the *Handbook*.

The *Handbook* describes the education requisite to a network and computer system administrator position as follows:

Network and computer systems administrators often are required to have a bachelor's degree, although an associate degree or professional certification, along with related work experience, may be adequate for some positions. Most of these workers begin as computer support specialists before advancing into network or systems administration positions. (Computer support specialists are covered elsewhere in the *Handbook*.) Common majors for network and systems administrators are computer science, information science, and management information systems (MIS), but a degree in any field, supplemented with computer courses and experience, may be adequate.

That passage indicates that network and computer system administrator positions do not always require a minimum of a bachelor's degree or the equivalent and, when they do, do not necessarily require a degree in a specific specialty.

The *Handbook* does not support the proposition that network and computer system administrator positions require a minimum of a bachelor's degree or the equivalent in a specific specialty, nor does any other evidence in the record. 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 it 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 finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that 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.

Factors often considered by USCIS when applying this criterion 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." *ee Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 71 2 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Although counsel asserted an industry-wide requirement of a minimum of a bachelor's degree or the equivalent in computer science, computer engineering, management information systems, or a related area, for positions akin to the proffered position, he provided no evidence of the recruitment and hiring practices of other companies to support that assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)). 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). Further, as already noted, the *Handbook* does not support the proposition that the proffered position qualifies as a specialty occupation.

For the reasons discussed above, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no indication that the petitioner's computer network is in any way unique or more complex than the networks of other firms, or that its maintenance and other duties of the beneficiary are so unique or so complex that the proffered position would require a minimum of a bachelor's degree or the equivalent in a specific specialty, notwithstanding that other network and system administrator positions may not. Because the petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual

with at least a baccalaureate degree, or the equivalent, in a specific specialty, it has not satisfied the second clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the record contains no evidence that the petitioner has 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).

The petitioner has also failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires it to establish that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate degree or higher in a specific specialty.

As was noted above, the duties described on appeal fit neatly into the *Handbook* description of a computer network and systems administrator position. The *Handbook*, however, as previously discussed, indicates that such positions do not categorically require a bachelor's degree, or the equivalent, in a specific specialty. Additionally, the AAO specifically finds that nothing in the descriptions of the duties - even as counsel attempted to expand them on appeal - establishes them as sufficiently specialized and complex to satisfy this criterion. To the extent that they are described in the record of proceeding, the AAO sees nothing that distinguishes the duties of the proffered position as more specialized and complex than computer network and systems administrator positions not requiring the application of knowledge usually associated with at least a baccalaureate degree in a specific specialty.

As the evidence in the record of proceeding has not established that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has failed to show that the proffered position qualifies as a position in a specialty occupation 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 will be denied on this basis.

Another basis for the director's decision of denial is the finding that the petitioner failed to provide a required itinerary of the beneficiary's proposed employment. The evidence in the record of proceeding indicates that the bulk of the petitioner's business consists of providing its workers to other companies to work on their projects. Further, as was noted above, the June 5, 2008 employment letter flatly states that the petitioner would assign the beneficiary to other locations. Additionally, counsel's assurance that the beneficiary would work exclusively at the petitioner's office carries no weight. As already observed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). 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; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506. In view of those facts, the AAO finds that the petitioner has not establish that it would employ the beneficiary solely at its offices. Thus, the petitioner is obliged, by 8 C.F.R. § 214.2(h)(2)(i)(B), to provide an itinerary as initial evidence submitted with the visa petition. The petitioner has not complied with that requirement, and the appeal will be dismissed and the petition denied for this additional reason.

The petitioner's failure to provide an itinerary raises another issue, however, in addition to failure to comply with the requirement of 8 C.F.R. § 214.2(h)(2)(i)(B). Rather than merely denying the visa petition because of the petitioner's failure to comply with the requirement of 8 C.F.R. § 214.2(h)(2)(i)(B) the service center requested, in the March 24, 2009 RFE and in the February 17, 2010 RFE, that the petitioner list the locations where the beneficiary would work and provide other data about his proposed employment at those sites. The petitioner did not comply with that request.

Even if the petitioner were not compelled by 8 C.F.R. § 214.2(h)(2)(i)(B) to provide an itinerary as part of the initial evidence in this matter, the regulations provide the director with broad discretionary authority to request evidence in support of a petition. Specifically, pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Moreover, in addition to 8 C.F.R. § 214.2(h)(9)(i), the regulation at 8 C.F.R. § 103.2(b)(8) provides the director broad discretionary authority to require such evidence as contracts and itineraries to establish that the services to be performed by the beneficiary will be in a specialty occupation during the entire period requested in the petition. A service center director may issue a request for evidence that he or she may independently require to assist in adjudicating an H-1B petition, and his or her decision to approve a petition must be based upon consideration of all of the evidence as submitted by the petitioner, both initially and in response to any request for evidence that the director may issue. *See* 8 C.F.R. § 214.2(h)(9). The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), (b)(8), and (b)(12).

The AAO finds that, in the context of the record of proceedings as it existed at the time the request for evidence was issued, the request for itinerary evidence was appropriate under the above cited regulations, not only on the basis that it was required initial evidence, but also on the basis that it was relevant to the material issues of where the beneficiary would work and whether his duties at those locations would qualify as specialty occupation duties, as well as whether the petitioner had any employment for the beneficiary 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 failure to provide the requested evidence

precluded a material line of inquiry. The appeal will be dismissed and the petition denied for this additional reason.

The final basis for the decision of denial is the director's finding that the petitioner failed to show that the LCA submitted to support the visa petition was valid for all of the locations where the beneficiary would work.

The regulation at 20 C.F.R. § 655.705(b) states, in pertinent part, that in determining whether to approve a Form I-129 visa petition ". . . [USCIS] determines whether the petition is supported by an LCA which corresponds with the petition . . . ." In order for an H-1B petition to be approvable, the location shown on the supporting LCA must correspond to the location where the beneficiary would work, as that location determines the prevailing wage threshold that sets the minimum wage or salary that the petitioner must pay.

In the instant case, although the petitioner has asserted that the beneficiary would work solely at its office in Herndon, the nature of the petitioner's business consists predominantly of providing its workers to other companies, and the content of the beneficiary's employment letter indicate that the petitioner would likely do the same with the beneficiary. The petitioner has not shown, by a preponderance of the evidence, that the beneficiary would work exclusively at its office. As it has not indicated where else the beneficiary might work, it has not demonstrated that the beneficiary would work exclusively in Herndon or in the surrounding area covered by the LCA, either. The petitioner has not, therefore, demonstrated that the LCA is valid for employment in all of the locations where the beneficiary would work. The appeal will be dismissed and the petition denied for this additional reason.

The record suggests an additional issue that was not addressed in the decision of denial.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
  - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (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 [a] 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 [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require 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;<sup>2</sup>
- (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

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<sup>2</sup> The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

However, in the instant visa category, 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 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*.

The previous description of the duties of the proffered position included some duties related to mechanical engineering, the field in which the beneficiary has a degree. Counsel appears, however, to have abandoned that description of duties. The remaining duties, those that counsel pressed on appeal, are very closely related to computer systems. In order to prevail, the petitioner would be obliged to demonstrate the specific field in which the proffered position requires a minimum of a bachelor's degree or the equivalent, and to demonstrate, pursuant to section 214(i)(2) of the Act and 8 C.F.R. § 214.2(h)(4)(iii)(C) that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that field*. The finding pertinent to the specialty occupation issue, however, renders further inquiry into the beneficiary's qualifications to work in the proffered position moot.

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 (9<sup>th</sup> 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. 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.