

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



D2

MAY 08 2012

Date:

Office: VERMONT SERVICE CENTER

FILE:



IN RE:

Petitioner:

Beneficiary:



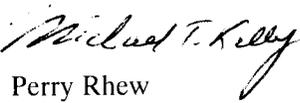
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for 
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition the petitioner stated that it is a travel management company. To employ the beneficiary in what it designates as a "Travel Consultant/Middle East & Eastern European Travel" position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserted that the visa petition should be approved.

As will be discussed below, the AAO has determined that the director's decision to deny the petition on the specialty occupation issue was correct. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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 the petitioner's submission on appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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 requires [(1)] 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 requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States."

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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

An addendum to the visa petition states the following about the proffered position:

[The beneficiary's] position would provide Full Travel Management services for our Corporate, Federal and State Government, and Leisure-client base, specializing in Middle East and Eastern European travel. This specialty would provide [the petitioner] a significant advantage in marketing ourselves, as we compete on a global basis. [The beneficiary's] practical travel experience and knowledge of International Business protocol, as well as his language skills (fluent in English/Bulgarian/Spanish and basic knowledge of French/Italian/and Russian) would be a significant asset to our organization.

That is the only description of duties of the proffered position that was provided with the visa petition. The substance of the duty description is that the beneficiary would provide travel management. That description is so abstract that it is incapable of demonstrating any particular level or field of education required. Further, the petitioner then provided no evidence, nor even an assertion, pertinent to any level of field of education required by the proffered position.

On October 13, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, the petitioner provided (1) an unsigned, unattributed statement pertinent to the proffered position; (2) an employee list; and (3) an organizational chart.

The unattributed statement pertinent to the proffered position asserts that the position requires a bachelor's degree, and that a degree in business, finance, or international studies is preferred for the position.

The AAO observes that, although the unattributed statement asserts that the proffered position requires a bachelor's degree, it does not indicate that the position requires a degree in any specific specialty. First, a preference is not a minimum requirement. Second, business, finance, and international studies do not delineate a specific specialty. Third, an educational requirement that can be satisfied by a degree in business is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty. *Cf. Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968).

The record does not contain even an allegation that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The failure of the petitioner even to allege that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty is a sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

That unattributed statement pertinent to the proffered position also provided the following expanded version of the duties of the proffered position:

Assist Director of International Travel with **Agent Training** on International Travel procedures and protocol such as documentation requirements, International Fare procedures and protocol such as documentation requirements, International Fare Calculations, competitive pricing options (consolidators versus scheduled Commercial Air Carriers)

Sales and Consulting on International Travel needs of our Commercial, Government, and Leisure Customers. Specifically, involved and detailed European Tours that encompass multiple destinations and coordination of service providers.

Provide **Translation Services** as needed to Customer's Vendors, and fellow employees attempting to communicate with entities relevant to customer travel needs in countries where language translation skills are needed. Procuring services from vendors in other countries, translating for customer base in other countries, and serving as inbound liaison as needed for International travelers visting local government officials regarding business for the State of West Virginia. (Example: West Virginia Development Offices)

Assist in Development of Group International Travel. An emphasis would be on procuring College and Universities Travel Abroad travel programs. We currently facilitate West Virginia University in this capacity and are in hopes of expanding on this customer base. Position would assist our Director of Group Travel in procuring and completing group travel movements of this nature. International Group travel is very detailed and complex, and deals with many different vendors. The group itinerary has to be customized, priced accordingly with mark-up/profit margins build in, and represent a significant liability to the travel agency, as you are contracting with each vendor a financial commitment regardless of the group's customer participation and payments.

Commission and Revenue Management as it relates to International Travel Services. Position would analyze and set our revenue fee structure for International Travel Services to customers. Negotiate contracts and commission override programs with International customers. Negotiating commission contracts requires analyzing statistical data that involves complex market share calculations and forecasting.

[Emphasis in the original.]

In table form, the unattributed statement allocated the beneficiary's time to those various duties as follows:

Assist Director of International Travel with Agent Training on International Travel procedures and protocol. 15%

Sales and Consulting on International Travel needs of our Commercial, Government, and Leisure Customers. 25%

Provide Translation Services as needed to Customer's Vendors, and fellow employees attempting to communicate with entities relevant to customer travel needs in countries where language translation skills are needed. 5%

Assist in Development of Group International Travel. 30%

Commission and Revenue Management as it relates to International Travel Services. Position would analyze and set our revenue fee structure for International Travel Services to customers. 25%

The unattributed statement also provides a list of some of the petitioner's employees, whom it states are "performing [in] similar positions, or [in] positions with which the applicant would be providing direct support/report responsibilities." The petitioner provided those employees' job titles and information pertinent to their education.

The AAO notes, initially, that whether the beneficiary would report to a person, or provide support to a person, in a position that requires a specific level of education has little bearing on whether the proffered position itself requires some specific level of education. The AAO will, however, further discuss that partial list of the petitioner's employees.

The list states that the petitioner's "Director of International" has a business administration degree and is currently pursuing a master's degree in science and strategic leadership.

The list states that the petitioner's Leisure Division Manager has a bachelor's degree in marketing and human resources management.

The list states that the petitioner's Cruise Director/Specialist has no college degree, but has some college and "Experience in lieu of college." The nature of that experience and whether that employee's education and experience, taken together, are equivalent to a bachelor's degree is not demonstrated nor even alleged. Nor, if it is, does the petitioner specify a degree in any particular specialty to which its employee's education and experience is equivalent.

The list states that the petitioner's [REDACTED] and [REDACTED] has "Experience in lieu of college." Whether that employee's experience is equivalent to a bachelor's degree in any specific specialty is neither demonstrated nor alleged.

The list states that the petitioner employs a Vacation Planner with a journalism degree, and another Vacation Planner with a finance and accounting degree.

The list states that the petitioner's Airline Reservationists/Domestic Vacation Planner has some college, but not a degree.

As was noted above, the petitioner also provided a complete list of its employees. That employee list includes a person with the job title, "Travel Consultant/Reservations." Although that job title is, of all of the job titles on that list, the most similar to the beneficiary's job title, that employee's name was not included in the list of employees with positions similar to the beneficiary's. The AAO observes that, according to the employee list, the petitioner's Travel Consultant/Reservations has one year of college in Travel & Tourism, but no degree.

The director denied the petition on December 2, 2009, finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position as a travel agent position.

On appeal, the petitioner's vice president for human resources stated that the petitioner has not been successful in finding trained travel agents in its area or willing to relocate there, and especially unsuccessful in finding bilingual employees, which has limited its business opportunities.

The petitioner's vice president also indicated that modern travel agent positions are more complex than traditional local travel agent positions, and that such traditional positions are now virtually non-existent.

The petitioner's vice president did not state that any aspect of the proffered position requires a bachelor's degree, or any education at all, except job training. She indicated that bilingualism is important, but offered no argument for the proffered position that bilingualism requires a minimum of a bachelor's degree or the equivalent in any specific specialty.

The AAO will now address the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent. In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

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 In the chapter entitled Travel Agents, the *Handbook* describes the duties of those positions as follows:

Travel agents assist travelers by sorting through vast amounts of information to help their clients make the best possible travel arrangements. Travel agents offer advice on destinations and make arrangements for transportation, hotel accommodations, car rentals, and tours for their clients. In addition, resorts and specialty travel groups use travel agents to promote travel packages to their clients.

Travel agents are expected to be able to advise travelers about their destinations, such as the weather conditions, local ordinances and customs, attractions, and exhibitions. For those traveling internationally, agents also provide information on customs regulations, required documents (passports, visas, and certificates of vaccination), travel advisories, and currency exchange rates. In the event of changes in itinerary in the middle of a trip, travel agents intercede on the traveler's behalf to make alternate booking arrangements.

Travel agents use a variety of published and computer-based sources for information on departure and arrival times, fares, quality of hotel accommodations, and group discounts. They may also visit hotels, resorts, and restaurants themselves to evaluate the comfort, cleanliness, and the quality of specific hotels and restaurants so that they can base recommendations on their own experiences or those of colleagues or clients. Many travel agents specialize in specific destinations or regions; others specialize in travel targeted to particular demographic groups, such as senior citizens.

Travel agents who primarily work for tour operators and other travel arrangers may help develop, arrange, and sell the company's own package tours and travel services. They may promote these services, using telemarketing, direct mail, and the Internet. They make presentations to social and special-interest groups, arrange advertising displays, and suggest company-sponsored trips to business managers.

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos124.htm> (last accessed January 17, 2012).

Some of the duties, *i.e.* consulting on International travel, assisting in the development of group travel, and setting commissions and fees, are consistent with to the *Handbook* description of travel agent duties. The duties of the proffered position also include training other travel agents and providing translation, or possibly interpretation, services.

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.

Although providing translations requires a high degree of fluency in two languages, the record contains no evidence or argument that it requires a minimum of a bachelor's degree or the equivalent in a specific specialty. Similarly, training other agents contains no indication that it requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The AAO will consider whether the characteristic duties of a travel agent require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The *Handbook* states the following about the educational requirements of travel agent positions:

Most travel agencies prefer applicants who have received training specific to becoming a travel agent. Many vocational schools offer full-time travel agent programs. Travel agent courses also are offered in public adult education programs, online, and in community colleges. These programs teach students about geography, sales, marketing, and travel industry forms and procedures for ticketing and reservations.

Although the *Handbook* indicates that "Most *travel agencies prefer* applicants who have received training specific to becoming a travel agent," [Emphasis provided.] it does not indicate that such training is a minimum entry requirement for the position. Further, the *Handbook* indicates that training as a travel agent is available from multiple sources, rather than exclusively, or even chiefly, from four-year universities. The *Handbook* provides no evidence that entry into travel agent positions is restricted to people with a minimum of a bachelor's degree or the equivalent in a specific specialty closely related to travel agent positions.

The petitioner's vice president for human resources asserted that the *Handbook*, in stating that travel agent positions can be held by people without a bachelor's degree, is apparently concerned with traditional travel agent positions that are now virtually extinct, rather than to travel agent positions that now exist. However, she provided no evidence in support of the assertion that actual existing travel agent positions are not available to people without a bachelor's 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)).

Further, although the petitioner's vice president implied that the proffered position, and travel agent positions in general, require a minimum of a bachelor's degree, she did not indicate a specific specialty in which that degree or equivalent must be. The vice president's assertion on appeal, even if taken at face value, would not support the proposition that the proffered position is a specialty occupation position.

The record contains no other evidence pertinent to whether the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent. The petitioner has not, therefore, satisfied 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 alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As was observed above, the *Handbook* provides no support for the proposition that the petitioner's industry requires travel agents to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of travel agents that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the travel industry. In short, the record contains no evidence that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in parallel positions in travel agencies similar to the petitioner. The petitioner has not, therefore, satisfied criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other travel agent positions in the petitioner's industry may not require a minimum of a bachelor's degree, or the equivalent, in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The first duty description provided with the visa petition merely stated that the beneficiary "would provide Full Travel Management services" That is clearly insufficient to distinguish the proffered position from other travel agent positions.

The other description of the duties of the proffered position, in the unattributed statement provided in response to the RFE, indicates that the beneficiary would (1) assist the Director of International Travel with agent training; (2) consult on International travel needs; (3) provide translation services; (4) assist in the development of group travel; and (5) manage commissions and revenues. Some of the duties described are in line with the duties of other travel agents, whose positions, the *Handbook* indicated, do not generally require a minimum of a bachelor's degree or the equivalent in a specific specialty. The ancillary duties of training other agents, and interpreting or translating, while not

typical of travel agents, have not been shown to be so complex or unique that they require a minimum of a bachelor's degree, or the equivalent, in a specific specialty. The petitioner has not, therefore, satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) may be satisfied if the petitioner provides evidence that it normally requires a degree or its equivalent for the position. In the instant case, the petitioner attempted to satisfy that requirement by providing a list of people who are either in similar positions or to whom the beneficiary would report or provide support. Which of those positions are alleged to be similar to the proffered position is not specified. That the beneficiary might report to someone whose position requires a bachelor's degree or provide support to someone whose position requires a bachelor's degree is of no value in demonstrating that the beneficiary's position requires a bachelor's degree.

Further, even assuming that all of the positions on that list are similar to the proffered position, only four of the seven employees listed have degrees, and those four degrees are in business administration, marketing and human resources, journalism, and finance and accounting. That wide array of subjects does not delineate a specific specialty. Further still, although the unattributed statement asserted that the remaining three employees have experience in lieu of education, it provided no indication that their experience is equivalent to a minimum of a bachelor's degree or the equivalent in a specific specialty.

The evidence does not demonstrate that the petitioner normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty for the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes 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, or the equivalent, in a specific specialty.

Again, however, the duties of the proffered position, assisting the Director of International Travel with training, consulting on International travel needs, providing translation services, assisting in the development of group travel, and managing commissions and revenues, although they contain some aspects that are not typical to travel agent positions, have not been shown to be so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director was correct in his determination that the record before him failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the submissions on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

Page 12

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.