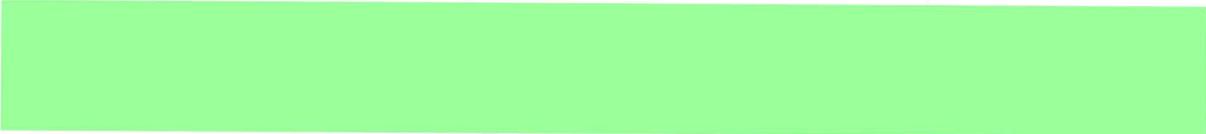




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 01 2013** OFFICE: CALIFORNIA 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (“AAO”) 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director revoked the approval of the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (“AAO”). The appeal will be dismissed. The approval of the petition will remain revoked.

On the Petition for Nonimmigrant Worker (Form I-129), the petitioner describes itself as a consulting and data engineering business established in 1992. It seeks to continue to employ the beneficiary in what it designates as a “manager, CRM” position and 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 revoked the approval of the petition on the grounds that (1) the certified labor condition application (“LCA”) that was submitted with the petition was not valid for the time period when the beneficiary began working for an end-client in California; and (2) the petitioner has not established that the proffered position offered to the beneficiary qualifies as a specialty occupation, as there is no evidence concerning the employer-employee relationship showing the petitioner has the right to control the beneficiary while he works at the end-client site.

The record of proceeding before the AAO contains: (1) the petitioner’s Form I-129 and supporting documentation; (2) the director’s notice of intent to revoke (“NOIR”); (3) the petitioner’s response to the NOIR; (4) the director’s notice of decision; and (5) the petitioner’s Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

As will be evident in the discussion below, the AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner has failed to overcome the grounds specified in the decision for revoking the petition. Accordingly, the appeal will be dismissed, and approval of the petition will remain revoked.

U.S. Citizenship and Immigration Services (“USCIS”) may revoke the approval of an H-1B petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which governs revocations that must be preceded by notice and states the following:

- (A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
 - (2) The statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
 - (3) The petitioner violated terms and conditions of the approved petition; or
 - (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or

(5) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

The AAO finds that the content of the NOIR comported with the regulatory notice requirements, as it provided a detailed statement that conveyed the grounds for revocation encompassed by the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A), and allotted the petitioner the required time for the submission of evidence in rebuttal that is specified in the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(B).

The AAO will first recount some salient facts from the record of proceeding, in order to set the stage for a discussion of the AAO's analysis behind its decision to dismiss this appeal.

On April 28, 2011, the petitioner filed an H-1B petition with USCIS, and it was approved on June 16, 2011.

On August 9, 2011, USCIS conducted an Administrative Site Visit. During the site visit, the site inspector discovered that the petitioner was no longer doing business at the location listed on the LCA; the company located at that address had no affiliation with the petitioner; and the beneficiary was not working at that location.

On February 9, 2012, the director issued an NOIR because the beneficiary was no longer employed by the petitioner in the capacity specified in the petition. Based on the site inspector's findings during the site visit, the director informed the petitioner that (1) the LCA submitted in support of the petition cannot be considered valid; (2) the beneficiary is not working at the address listed on the petition and USCIS is unable to determine that the position is a specialty occupation; and (3) since the beneficiary is not working at the address listed on the petition, USCIS cannot determine if the petitioner is in compliance with the terms and conditions of employment. The director gave the petitioner the prescribed period to respond to the NOIR.

On March 12, 2012, counsel for the petitioner responded to the NOIR and contends, in a letter dated March 9, 2012, that "the failure to maintain an LCA for each work location is a technical violation"; that "the petitioner was at the location where indicated when the petition was filed[,] [and] [i]ts subsequent move does not invalidate the previously approved petition." Counsel states that "the company does still hold a lease on that location" and submitted a copy of the lease amendment, between [redacted] and the petitioner, effective as of March 1, 2010, for the

premises located at [REDACTED] Chicago, Illinois, [REDACTED] and a portion of [REDACTED]

Counsel contends that the beneficiary is employed in a specialty occupation. Counsel states the following:

In fact, the duties are similar to those described in the petition that was filed and the position is precisely the same. The petition was filed for the beneficiary to be employed at \$95,000 per year as a Manager, CRM (Customer Relationship Management). The only discrepancy is the work location. Otherwise, the employment is identical.

Counsel also contends the following:

All of the information at the time of filing was correct. The fact that there were subsequent activities which may require additional steps does not make the filing incorrect. Please note that the petitioner's mistake, which was inadvertent, should not call into question all of its evidence, particularly its objective evidence.

In a letter submitted in response to the NOIR, dated March 8, 2012, the petitioner states the following:

[The beneficiary] is currently on a temporary assignment at a client site to assist with the implementation of Business & Decision systems We have filed for a Labor condition application for that location. . . . [The beneficiary] is on assignment [and has been since April 2011] at the [REDACTED] in South San Francisco, California. He continues to maintain a residence in the Chicago area and was resident in the Chicago area when the petition was filed. . . .

The petitioner also indicates that it is in compliance with the terms and conditions of employment, as follows:

Please be assured that [the beneficiary] continues to be an employee of the company. We are providing for you a copy of his W-2 Wage and Tax Statement from 2011, which reflects earnings over \$90,000 per year. In addition, he continues to be paid a salary by the company and we attach his February 29, 2012 Earnings Statement.

For the reasons that will be discussed below, the AAO agrees with the director's decision to revoke the approval of the H-1B petition. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the approval of the petition will remain revoked.

The first issue before the AAO is whether the petitioner submitted a valid LCA for all the locations where the beneficiary will work. General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1), in pertinent part, as follows:

Every benefit request or other document submitted to [the Department of Homeland Security (DHS)] must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.

Further discussion of the filing requirements for applications and petitions is found at 8 C.F.R. § 103.2(b)(1), as follows:

Demonstrating eligibility. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request.

The regulations require that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner obtain a certified LCA from the U.S. Department of Labor (“DOL”) in the occupational specialty in which the H-1B worker will be employed. *See* 8 C.F.R. § 214.2(h)(4)(i)(B). The instructions that accompany the Form I-129 also specify that an H-1B petitioner must submit evidence that an LCA has been certified by DOL when submitting the Form I-129.

Additionally, the regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) provides as follows:

Service or training in more than one location. A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with USCIS as provided in the form instructions. The address that the petitioner specifies as its location on the I-129 shall be where the petitioner is located for purposes of this paragraph.

As noted above, the petitioner indicated on the Form I-129 that the beneficiary would be working only at the petitioner's business in Chicago, Illinois¹ for the duration of the H-1B employment period, i.e., September 16, 2011, to September 15, 2014.² The certified LCA submitted *with* the Form I-129 also indicates that the beneficiary will work only at the petitioner's business in Chicago. However, in a letter dated March 8, 2012 and submitted in response to the director's NOIR, the petitioner stated that the beneficiary has been on assignment at the [redacted] in South San Francisco, California, since April 2011. Also, the petitioner stated that it had closed its Chicago office.

¹ On the Form I-129, at Part 5, section 5 on page 4, the petitioner checked the box “no,” indicating that the beneficiary would not work off-site.

² The AAO notes that the petitioner requested an end date of September 16, 2014, however, the three year period for the H-1B extension ends on the preceding day, September 15, 2014.

The regulation at 8 C.F.R. § 214.2(h)(2)(E) states:

Amended or new petition. The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H-1C, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination. In the case of an H-1B petition, this requirement includes a new labor condition application.

It is self-evident that a change in the location of a beneficiary's work to a geographical area not covered by the LCA filed with the Form I-129 is a material change in the terms and conditions of employment. Because work locations are critical to the petitioner's wage rate obligations, the change deprives the petition of an LCA supporting the periods of work to be performed at the two locations and certified on or before the date the instant petition was filed. While, subsequent to the NOIR, the petitioner submitted a new LCA listing the work location in San Francisco, California and the respective dates of employment, the petitioner in this case was required to submit an amended or new H-1B petition with USCIS indicating the change in location and dates, along with the newly certified LCA that establishes eligibility at the time that new or amended petition is filed.

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

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

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

In light of the above, the AAO finds that a necessary condition for approval of an H-1B visa petition is an LCA, certified *on or before* the filing date of the petition, with information, accurate as of the date of the petition's filing, as to where the beneficiary would actually be employed. Furthermore, the petition must list the location(s) where the beneficiary would be employed and be accompanied by an itinerary with the dates the beneficiary will provide services at each location. Both conditions were not satisfied in this proceeding. The petitioner failed to amend the petition and file the requisite itinerary. Also, the petitioner's attempt to remedy the LCA deficiency, in response to the NOIR, by submitting an LCA certified after the filing of the petition is ineffective. Again, a petitioner must establish eligibility at the time of filing a nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

It is further noted that to ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. If a petitioner's intent changes with regard to a material term and condition of employment or the beneficiary's eligibility, an amended or new petition must be filed. To allow a petition to be amended in any other way would be contrary to the regulations. Taken to the extreme, a petitioner could then simply claim to offer what is essentially speculative employment when filing the petition only to "change its intent" after the fact, either before or after the H-1B petition has been adjudicated. The agency made clear long ago that speculative employment is not permitted in the H-1B program. A 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

In view of the foregoing, the petitioner has not overcome the director's first basis for revoking the approval of the petition. Accordingly, the AAO shall not disturb the director's revocation of the approved petition on this ground.

The second issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. In this regard, the AAO finds that the director's decision conveyed that the revocation was based upon each of two closely related factors, namely, (1) the lack of sufficient evidence to establish that the beneficiary would be performing the services of a specialty occupation, and (2) the lack of evidence to establish that whatever work would be performed would be done on an employer-employee basis in which the petitioner is in such a controlling relationship over the beneficiary and the beneficiary's work as to give the petitioner standing to file an H-1B specialty occupation, that is, as a United States employer within the meaning of the definition at 8 C.F.R. § 214.2(h)(4)(ii).

Specifically, the AAO finds that, for each of the two evidentiary deficits noted above, the petition had been approved in error. This aspect of the petition's approval justifies revocation under the provision at 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), which applies in instances where a petition's approval violated the requirements of the H-1B regulations or involved gross error. In this regard, the AAO finds this revocation-on-notice provision operative not only because of the petitioner's failure to establish the proffered position as a specialty occupation, but also because of the petitioner's failure to establish the employer-employee relationship necessary for a petitioner to have standing to file a petition, that is, as a United States employer within the meaning of the definition at 8 C.F.R. § 214.2(h)(4)(ii). The AAO will address each of these aspects below, starting with the specialty occupation issue.

For an H-1B petition to be approved, the petitioner must provide sufficient evidence to establish that the beneficiary would provide services in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the position that is the subject of the petition meets the applicable statutory and regulatory requirements.

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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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, a proposed 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 particular positions 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), 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and

responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The AAO notes that, as recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. See *Defensor v. Meissner*, 201 F.3d at 387-388. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

As a preliminary matter and as recognized in *Defensor v. Meissner*, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s) in order to properly ascertain the minimum educational requirements necessary to perform those duties. See *Defensor v. Meissner*, 201 F.3d at 387-388. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. See *id.*

The record of proceeding in this present matter is similarly devoid of sufficient information from the end-client, the [REDACTED] regarding the specific job duties to be performed by the beneficiary for that company. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary, therefore, precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Thus, it appears that the petitioner had not established that it had satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, there was no basis for approval of the petition, and the approval therefore violated the requirements of the H-1B regulations

Next, the AAO will briefly address the issue of whether or not the petitioner qualifies as a United States employer with standing to file the H-1B petition. As detailed above, the record of proceeding

lacks sufficient documentation evidencing what exactly the beneficiary would do for the period of time requested or where exactly and for whom the beneficiary would be providing services. In light of these evidentiary deficiencies, the petitioner has failed to establish who has or will have actual control over the beneficiary and over the day-to-day substantive scope of the beneficiary's work and over the constituent specific tasks required to perform that work. In other words, the petitioner has failed to establish whether it has made a bona fide offer of employment to the beneficiary based on the evidence of record or that the petitioner, or any other company with which the beneficiary may be assigned, will have and maintain an employer-employee relationship with the beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). As previously discussed, there is insufficient evidence detailing where the beneficiary will work, the specific projects to be performed by the beneficiary, or for which company the beneficiary will ultimately perform these services. Therefore, the director's decision is affirmed, and the petition must remain revoked for this additional reason also, which establishes that the petition was approved in violation of the H-1B specialty occupation regulations in that the approval was granted for a petitioner who had not established its standing to file an H-1B specialty occupation petition or to receive the benefits of the H-1B program.

In short, based upon its complete review of the appeal and the record of proceeding, the AAO concludes that petitioner has failed to overcome the grounds for revocation specified in the revocation decision.

Aside from the merits of the director's revocation decision, discussed above, the AAO observes, beyond the decision of the director, that in the instant case, there is an additional basis upon which the director could still initiate revocation-on-notice proceedings, namely, what appears to be justification for initiating such proceedings under both of the following provisions: (1) 8 C.F.R. § 214.2(h)(11)(iii)(A)(2), that is, by assigning the beneficiary to a work location other than the one to which the petitioner attested in the Form I-129 and the related LCA, it appears that the statement of facts contained in the petition were not true and correct, were inaccurate, and/or misrepresented a material fact; and (2) 8 C.F.R. § 214.2(h)(11)(iii)(A)(3), that is, by changing the work location for which the director had approved the petition, the petitioner had violated the terms and conditions of the approved petition. As previously discussed, based on the site visit, USCIS learned that the petitioner had vacated the premises in Chicago, Illinois in April 2011. Also, in a letter, dated March 8, 2012, submitted in response to the director's NOIR, the petitioner stated that the beneficiary has been on assignment at the [REDACTED] in South San Francisco, California, since April 2011. The LCA that was submitted with the petition was certified on April 25, 2011 and signed by a representative of the petitioner on April 26, 2011. The petition was filed on April 28, 2011. Here, the petitioner appears to have vacated the premises in April 2011, and it appears evident that at the time the petitioner filed the petition, the petitioner knew that it was vacating the premises listed as the place of employment on the petition or had already vacated the premises. Also, it would appear that the petitioner knew that the beneficiary would not be working at the premises in Chicago and had been or would be reassigned to work at [REDACTED] in San Francisco. Despite this apparent knowledge of the petitioner's plans for an impending move (or even, knowledge of an actual move) and the change in job location and end-client for the beneficiary, the petitioner did not change the

information that it listed on the petition and filed it with incorrect information.

The appeal will be dismissed and the approval of the petition will remain revoked for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The approval of the petition remains revoked.