



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JUN 04 2013

Office: VERMONT SERVICE CENTER

File: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 Michael T. Kelly
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director initially approved the instant nonimmigrant visa petition. The director subsequently issued a notice of intent to revoke (NOIR) the approval of the petition, to which the petitioner submitted a timely response. After consideration of that response, the director revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

On the Petition for a Nonimmigrant Worker (Form I-129) the petitioner stated that it is a contract engineering firm. The petition approval that is the subject of the revocation now on appeal was granted for the petitioner to employ 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), in a position to which the petitioner had assigned the title "senior piping designer."

The director's revocation of the petition's approval was based on the director's finding that the petitioner had failed to establish that the petitioner would employ the beneficiary in a specialty occupation position. On appeal, counsel submits additional evidence and asserts that the petitioner has overcome the basis specified for the revocation.

In addition to all of the documentation that constitutes the record of proceeding that culminated in the approval of the petition, the record of proceeding before the AAO includes (1) the director's NOIR; (2) the petitioner's response to the NOIR; (3) the director's decision revoking the approval of the petition; (4) the Form I-290B and supporting documentation submitted to appeal the revocation of the petition's approval; (5) the two requests for additional evidence (RFEs) issued by the AAO; and (6) the petitioner's responses to the AAO's RFEs. 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 proceeding, the petitioner has failed to overcome the grounds specified in the director's decision to revoke the approval of 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.

On November 17, 2008, the director issued the NOIR. The NOIR states that “[i]t has come to the attention of USCIS that [the petitioner] may not be able to offer the beneficiary a qualifying H1B position.” The AAO notes that the NOIR requested evidence that the petitioner had sufficient specialty occupation employment to keep the beneficiary employed in such a capacity throughout the requested period of employment.

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).

On December 17, 2008, counsel for the petitioner responded to the NOIR. In a letter dated December 15, 2008, counsel contends that “[t]he petitioner has sufficient work and resources available to employ . . . [the beneficiary].”

In response to the NOIR, counsel also submitted, *inter alia*, a copy of a letter dated September 4, 2007, from the General Manager, Engineering, at [REDACTED], which is addressed “To Whom it May Concern,” stating that “[REDACTED] is in the process of working through [REDACTED] (recruitment division) with [the petitioner], for the supply of professional personnel for work in the [REDACTED] Houston office.” (This document will hereinafter be referred to as the [REDACTED] Letter).

On February 27, 2009, the approval of the visa petition was revoked based on the director’s finding that the petitioner had not submitted evidence of sufficient specialty occupation employment to keep the beneficiary employed in a specialty occupation throughout the requested period of employment.

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On appeal, counsel asserted that approval of the visa petition was revoked on a basis other than that noted in the NOIR, and that the petitioner was not, therefore, accorded an opportunity to submit evidence to overcome the basis cited in the NOIR prior to revocation. With the Form I-290B, counsel resubmitted a copy of the [REDACTED] Letter and submitted a copy of an undated and unsigned document on [REDACTED] letterhead, entitled, “[REDACTED] Job Order” (hereinafter referred to as the [REDACTED] Job Order).

The [REDACTED] Job Order states “[t]he following order is open and available to receive submittals from [REDACTED].” The [REDACTED] Job Order also states that “[a]ccording to the terms of your contract, [REDACTED] will not accept unsolicited resumes.”

The [REDACTED] Job Order further states, in pertinent part, the following:

Job Title: Principal/Senior Piping Designer

Number of Openings: 5

Hire Type: Contract

Location: [REDACTED] Sugar Land, TX [REDACTED]

Job Description/Requirements:

We currently seek a high caliber Principal Piping Designer to work on a contract basis for approximately 36+ months. Based at the [REDACTED] office in Sugar Land[,] TX, you will be working for one of the world’s leading engineering, procurement & construction companies to [sic] the Oil, Gas & Petrochemicals sector.

Job Description:

Be able to develop a plant, area or unit plot plan; responsible for development of any piping layout; responsible for development of any vessel orientation; supervise development of design model; responsible for checking of piping plan and isometric drawings; recognize and report problems on flow sheet; solve flexibility problems not requiring computer application; coordinate with other disciplines to insure compatibility of design; and travel, as required, to assure successful execution of project & dept. goals.

*Responsible for understanding the entire Code of Conduct and complying with its requirements

*Other duties as assigned

Job Requirements:

Bachelor[']s Degree / 10+ years of applicable design experience (petrochemical/refinery)

On December 6, 2011, the AAO issued the first of its two RFEs, which noted, in part, that the AAO did not agree with the petitioner’s contention on appeal that the grounds cited in the NOIR and the grounds upon which the petition’s approval was subsequently revoked were so disparate as to invalidate the director’s revocation of the approval of the petition. However, the AAO also indicated that it was issuing the RFE to allow the petitioner an additional opportunity to provide

substantive evidence towards overcoming the grounds upon which the petition's approval had been revoked. In pertinent part, this first RFE from the AAO stated:

Accordingly, the AAO hereby instructs the petitioner to provide evidence that, at the time it filed the visa petition, it had sufficient specialty occupation work to employ the beneficiary in a specialty occupation throughout the requested period of employment. The evidence must demonstrate where the beneficiary would work and for whom, and who would assign his duties, supervise his performance, and provide the tools and instrumentalities necessary to perform his assigned duties. The evidence must also demonstrate, through such evidence as contracts, work orders, and statements of work, who would be the end-user of the beneficiary's services and whether the beneficiary would be provided to an end-user through an intermediary. If the end-user of the beneficiary's services would be an entity other than the petitioner, the evidence must include a statement from the end-user of the beneficiary's prospective duties and that entity's educational requirements to perform those duties. The AAO emphasizes that the evidence must show that, at the time the petitioner filed the visa petition, it already had specialty occupation employment to which it could assign the beneficiary or that it already had an agreement to provide the beneficiary to another entity to perform specialty occupation employment for that other entity.

In addition, if the beneficiary would work at more than one location during the requested employment period, the petitioner must provide an itinerary with the dates and addresses of the services to be provided. Lastly, the petitioner is reminded that it must also demonstrate that it has Labor Condition Application(s) certified on or before April 2, 2007 that cover all of the beneficiary's employment locations.

In response to the AAO's first RFE, counsel submitted a letter, dated January 17, 2012, in which counsel asserted that the NOIR was invalid because it was not based on any of the permissible bases for revocation listed at 8 C.F.R. § 214.2(h)(11)(ii).¹ Counsel also cited to the [redacted] Job Order (and stated that "[redacted] is the recruitment division of [redacted]") as evidence that the petitioner has sufficient specialty occupation employment to occupy the beneficiary throughout the period of requested employment.

On March 2, 2012, the AAO issued its second RFE, which stated in pertinent part:

The AAO observes [that] approval of [the] visa petition was revoked based on the director's finding that the petitioner had provided insufficient evidence that it would employ the beneficiary in a specialty occupation. As such, the director had sufficient authority pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(1), (3), and (5), to revoke approval of the visa petition in this matter. Even if the director had erred as a procedural

¹ The AAO notes that the correct citation for the revocation on notice provisions is 8 C.F.R. § 214.2(h)(11)(iii), and not 8 C.F.R. § 214.2(h)(11)(ii), as cited by counsel.

matter in not explicitly citing one of the bases for revocation listed at 8 C.F.R. § 214.2(h)(11)(iii), it is not clear what remedy would be appropriate beyond this notice. The petitioner has in fact been provided multiple opportunities to supplement the record and respond to the eligibility issues identified in this matter. Furthermore, this notice provides the specific bases for revocation at 8 C.F.R. § 214.2(h)(11)(iii). Therefore, it would serve no useful purpose to remand the case simply to have the director reissue the NOIR and revocation notice citing the pertinent regulatory authority for its actions. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Further, whatever disadvantage the petitioner may have suffered by the director's alleged failure to accord ample opportunity to the petitioner to respond to the basis of revocation, the harm of that claimed error was also cured, when the AAO issued the December 6, 2011 request for evidence.

While the AAO is not required to do so, it will accord the petitioner a final opportunity to address the substantive basis for the decision of revocation, that is, to provide evidence that, at the time it filed the visa petition, the petitioner had sufficient specialty occupation work to employ the beneficiary in a specialty occupation throughout the period of intended employment. The evidence provided must demonstrate where the beneficiary would work and for whom, and who would assign his duties, supervise his performance, and provide the tools and instrumentalities necessary to perform his assigned duties. The evidence must also demonstrate, through such evidence as contracts, work orders, and statements of work, who would be the end-user of the beneficiary's services and whether the beneficiary would be provided to an end-user through an intermediary.

If the end-user of the beneficiary's services would be an entity other than the petitioner, the evidence must include a statement from the end-user of the beneficiary's prospective duties and that entity's educational requirements to perform those duties. The AAO emphasizes that the evidence must show that, at the time the petitioner filed the visa petition, it already had specialty occupation employment to which it could assign the beneficiary or that it already had an agreement to provide the beneficiary to another entity to perform specialty occupation employment for that other entity.

In addition, if the beneficiary would work at more than one location during the intended employment period, the petitioner must provide an itinerary with the dates and addresses of the services to be provided. The petitioner is reminded that it must also demonstrate that it has Labor Condition Application(s) certified on or before April 2, 2007 that cover all of the beneficiary's employment locations. . . .

In response to the AAO's second RFE, counsel submitted a letter, dated March 28, 2012, in which counsel asserted that the revocation of the petition's approval was based on conjecture, and again

cited the [REDACTED] Job Order as evidence that the petitioner would employ the beneficiary in a specialty occupation position. Counsel also stated that the job duties in the [REDACTED] Job Order reflect the job duties that the petitioner listed for the proffered position. Counsel further stated that the RFE “is imposing additional burdens to the petitioner not addressed in the revocation.” Finally, counsel stated the following:

The certified Labor Condition Application used to support the petition is valid for the [REDACTED]. The petitioner and the client, [REDACTED] are both located in Sugar Land, Texas. The Labor Condition Application is valid throughout the period of employment as the beneficiary will only work in Sugar Land, Texas.

The issue before the AAO is whether the petitioner has provided sufficient evidence to overcome the basis for revocation and 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 the lack of sufficient evidence to establish that the petitioner would employ the beneficiary in a specialty occupation position.

Specifically, the AAO finds that, due to the evidentiary deficit 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 because of the petitioner’s failure to establish the proffered position as a specialty occupation. The AAO will address the specialty occupation issue below.

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 v. Meissner*, *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 former 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 asserted end-client regarding the specific job duties to be performed by the beneficiary for that company. The [REDACTED] Letter and the [REDACTED] Job Order appear to indicate that [REDACTED] might be the end-client. However, the only evidence in the record that might conceivably be construed as a statement, by the end-user of the beneficiary's services, of the duties the beneficiary would perform, is the [REDACTED] Job Order, purportedly issued by the recruitment division of [REDACTED]. The evidence is insufficient to show that [REDACTED], rather than one of its clients, would be the actual end-user of the beneficiary's services, or, for that matter, that the petitioner had secured for the beneficiary, with any business entity, the work that the petitioner ascribed to the proffered position.

Obviously, the [REDACTED] Job Order and the [REDACTED] Letter are central to the petitioner's claim that at the time of the petition's filing, it had secured work for the beneficiary to perform in the proffered position for the employment period specified in the petition. Therefore, for easy reference, the AAO will quote them both below, in their entirety.

The full body of the aforementioned [REDACTED] Letter reads as follows:

[REDACTED] is in the process of working through [REDACTED] (recruitment division) with [the petitioner], for the supply of professional personnel for work in the [REDACTED] Houston office. Currently, the workload and backlog for the Engineering and Construction industry is heavier than it has been since the late 1970s, and after 1970s, and it appears that this heavy workload may continue for several years to come. [REDACTED] is a major engineering contractor in this business and has a significant need for people degreed in Engineering and Engineering Technology that may surpass the number of resources from the domestic market alone. It is for this reason that [the petitioner], with whom [REDACTED] has worked in the past through [REDACTED] affiliate recruitment division, is in the process of supporting the staffing of qualified resources in Venezuela.

The record reflects that the petition had been filed months before the September 4, 2007 date of the [REDACTED] Letter. Yet, even so, the letter does not indicate that the beneficiary, or any other person for that matter, had been selected for any type of position within the range mentioned in the letter. Rather, the letter only indicates that “[REDACTED] is in the process of working through [REDACTED] (recruitment division) with [the petitioner], for the supply of professional personnel for work in the [REDACTED] Houston office.”

Next, as earlier noted, the [REDACTED] Job Order states “[t]he following order is open and available to receive submittals from [REDACTED].” The [REDACTED] Job Order also states that “[a]ccording to the terms of your contract, [REDACTED] will not accept unsolicited resumes.”

The [REDACTED] Job Order further states, in pertinent part, the following:

Job Title: Principal/Senior Piping Designer

Number of Openings: 5

Hire Type: Contract

Location: [REDACTED] Sugar Land, TX [REDACTED]

Job Description/Requirements:

We currently seek a high caliber Principal Piping Designer to work on a contract basis for approximately 36+ months. Based at the [REDACTED] in Sugar Land[,] TX, you will be working for one of the world’s leading engineering, procurement & construction companies to [sic] the Oil, Gas & Petrochemicals sector.

Job Description:

Be able to develop a plant, area or unit plot plan; responsible for development of any piping layout; responsible for development of any vessel orientation; supervise development of design model; responsible for checking of piping plan and isometric drawings; recognize and report problems on flow sheet; solve flexibility problems not requiring computer application; coordinate with other disciplines to insure

compatibility of design; and travel, as required, to assure successful execution of project & dept. goals.

*Responsible for understanding the entire Code of Conduct and complying with its requirements

*Other duties as assigned

Job Requirements:

Bachelor[']s Degree / 10+ years of applicable design experience (petrochemical/refinery)

While not noted or acknowledged by counsel or the petitioner, the following prefatory section, at the top of the one-page "job order," clearly indicates that the document is no more than a solicitation for "submittals from [REDACTED]" for candidates for review for possible hire:

The following order is open and available to receive submittals from [REDACTED]. Please submit your qualified candidates to [REDACTED] for review. **The "Job ID" and "Candidate Name" must be in the subject line. The candidate pay rate and availability date should be included with your submittal.** Your candidate(s) will be screened and forwarded to the appropriate hiring manager. You should receive a response from our coordinator within 5 business days. To follow up after this timeframe, please submit your follow-up request to [REDACTED].

According to the terms of your contract, [REDACTED] will not accept unsolicited resumes.

As such, and even when read in conjunction with the [REDACTED] Letter, this document is not evidence that the beneficiary's name was actually even forwarded as a candidate pursuant to this solicitation. What's more, this document is not evidence that the beneficiary was accepted for any one of the five openings noted in the document. Further, the petitioner failed to provide any evidence that the beneficiary's name and resume were even submitted for consideration. As such, this job order is not itself evidence that the beneficiary would perform the position posted in the job order. Further, the AAO finds that the petitioner has submitted no other evidence to establish that, at the time of the petition's filing or even by the time of the petition's approval, the petitioner had secured for the beneficiary the "senior piping designer" work for which the petition had been filed.

Additionally, the AAO finds that the petitioner has failed to establish that the [REDACTED] Letter even relates to the [REDACTED] Job Order. The [REDACTED] Letter refers neither to the [REDACTED] Job Order nor to the Principal/Senior Piping Designer positions for which that solicitation was issued; and the [REDACTED] Letter provides no statement of the duties to be performed by the "supply of professional personnel" that the letter says that [REDACTED] was seeking.

Additionally, the AAO observes that while the [REDACTED] Job Order states that it "is open and available to receive submittals from [REDACTED]," no documentation showing that the

petitioner was within the [REDACTED] was provided, and thus, there is insufficient evidence in the record to establish whether the petitioner is a [REDACTED]. Further, the [REDACTED] Job Order is undated, and, as such, there is a lack of a temporal connection to both the proffered position and to the [REDACTED] Letter.

On another level, the AAO also focuses on the statement in the [REDACTED] Job Order that accepted candidates would be “[b]ased at the [REDACTED] in Sugar Land, TX” and the statement in the [REDACTED] Letter that [REDACTED] “is a major engineering contractor” in the “Engineering and Construction industry.” The AAO finds that the tenor and implication of these statements is that [REDACTED] is, at least partially, in the business of assigning, or contracting-out, for work at other entities persons that it may accept for “contract” hire pursuant to job orders like the one submitted into this record of proceeding. Accordingly, even if they were shown to be relevant - and they have not been - the [REDACTED] Letter and the [REDACTED] Job Order would be insufficient to establish where and for whom the beneficiary would actually work and, more importantly, what substantive duties the beneficiary would actually perform for whoever the actual end-client might be.

In this regard, then, the AAO notes that the [REDACTED] Job Order lists the location as being “The [REDACTED] - [REDACTED] Sugar Land, TX [REDACTED]” but the evidence is insufficient to establish whether the work would actually be performed there, and, if so, what extent of the work (i.e., all or a portion of the work). Also in this regard, the AAO notes that a different address was used on the Labor Condition Application (LCA) and on the Form I-129. The employer’s address listed on the LCA is “[REDACTED] Sugar Land, TX [REDACTED]” which is also listed as the address where the beneficiary will work on Form I-129. This address discrepancy appears to indicate that there was a change from the originally-identified employment address, that the proffered position requires travel, and/or that some portion of the work, or perhaps all of it, would be at remote locations.

Based upon its review of the totality of the evidence in the record of proceeding, and for the reasons discussed above, the AAO finds that, at the time when the petition was approved, the record of proceeding failed to establish the substantive nature of the work to be performed by the beneficiary. Consequently, there was an insufficient evidentiary basis for the petition’s approval, as the evidence of record failed to satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of the 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 - grounds enough for the

revocation – as well appears to have been gross error – a separate and additional ground. Further, based upon its complete review of the appeal and the record of proceeding, the AAO concludes that the petitioner has failed to overcome the ground for revocation specified in the revocation decision. Consequently, the appeal will be dismissed, and the petition will remain revoked.

However, the petitioner should also note that, even if the petitioner had overcome the ground that the director's decision specified for revocation of the approval of this petition, approval of the petition could not be granted or reinstated at this time. This is because the AAO's review of the record of proceeding in the course of this appeal revealed additional aspects of the petition that would require the AAO to remand the petition to the director to resume the revocation-on-notice process by issuing a new NOIR that would notify the petitioner of, and allow the petitioner to submit evidence to rebut, at least the following additional grounds for considering revocation of approval of the petition, namely: 8 C.F.R. § 214.2(h)(11)(iii)(A)(2), that is, by now claiming that the beneficiary was assigned to a different work address than attested to in the Form I-129 and the LCA, it appears that the related statement of facts contained in the petition would not have been true and correct, would have been inaccurate, and/or would have misrepresented a material fact.

The appeal will be dismissed and approval of the petition will be revoked based on 8 C.F.R. § 214.2(h)(11)(iii)(5), because the approval of the petition was not supported by sufficient evidence that the proffered position was a specialty occupation and, therefore, because the approval violated the specialty-occupation requirements of the H-1B regulations and, additionally, involved gross error.

The appeal will be dismissed and the approval of the petition will remain revoked for the above stated reason. 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.