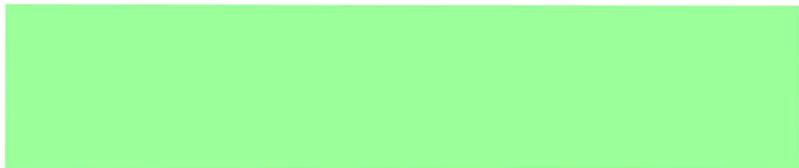


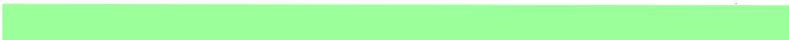


U.S. Citizenship
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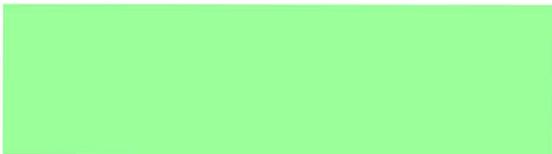


DATE: JUN 18 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a software development services firm. In order to continue to employ the beneficiary in what it designates as a "programmer analyst – financial" position, the petitioner seeks 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 based her denial of the petition on two bases: (1) that the petitioner had not established that it was qualified to file an H-1B petition, in that the evidence of record did not establish the petitioner as a U.S. employer as defined at 8 C.F.R. § 214.2(h)(4)(ii); and (2) that the petitioner had not established that it would abide by the terms and conditions of H-1B employment.

Upon review, the AAO finds that insufficient reason exists in the record to conclude that the petitioner will not abide by the terms and conditions of H-1B employment; therefore, the finding that the petitioner has not demonstrated that it would abide by the terms and conditions of H-1B employment is hereby withdrawn. The remaining issue on appeal is whether the petitioner has established that it has standing to file the visa petition as the beneficiary's prospective U.S. employer.

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant in pertinent part as an alien:

subject to section 212(j)(2), who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . . , who meets the requirements for the occupation specified in section 214(i)(2) . . . , and with respect to whom the Secretary of Labor determines and certifies to the [Secretary of Homeland Security] that the intending employer has filed with the Secretary [of Labor] an application under section 212(n)(1)

The term "United States employer" is defined in the Code of Federal Regulations at 8 C.F.R. § 214.2(h)(4)(ii) as follows:

United States employer means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) *Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and*
- (3) Has an Internal Revenue Service Tax identification number.

(Emphasis added); *see also* 56 Fed. Reg. 61111, 61121 (Dec. 2, 1991).

The record is not persuasive in establishing that the petitioner will have an employer-employee relationship with the beneficiary.

Although "United States employer" is defined in the regulations at 8 C.F.R. § 214.2(h)(4)(ii), it is noted that the terms "employee" and "employer-employee relationship" are not defined for purposes of the H-1B visa classification. Section 101(a)(15)(H)(i)(b) of the Act indicates that an alien coming to the United States to perform services in a specialty occupation will have an "intending employer" who will file a Labor Condition Application with the Secretary of Labor pursuant to section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1) (2012). The intending employer is described as offering full-time or part-time "employment" to the H-1B "employee." Subsections 212(n)(1)(A)(i) and 212(n)(2)(C)(vii) of the Act, 8 U.S.C. § 1182(n)(1)(A)(i), (2)(C)(vii) (2012). Further, the regulations indicate that "United States employers" must file a Petition for a Nonimmigrant Worker (Form I-129) in order to classify aliens as H-1B temporary "employees." 8 C.F.R. § 214.2(h)(1), (2)(i)(A). Finally, the definition of "United States employer" indicates in its second prong that the petitioner must have an "employer-employee relationship" with the "employees under this part," i.e., the H-1B beneficiary, and that this relationship be evidenced by the employer's ability to "hire, pay, fire, supervise, or otherwise control the work of any such employee." 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer").

Neither the legacy Immigration and Naturalization Service (INS) nor U.S. Citizenship and Immigration Services (USCIS) defined the terms "employee" or "employer-employee relationship" by regulation for purposes of the H-1B visa classification, even though the regulation describes H-1B beneficiaries as being "employees" who must have an "employer-employee relationship" with a "United States employer." *Id.* Therefore, for purposes of the H-1B visa classification, these terms are undefined.

The United States Supreme Court has determined that where federal law fails to clearly define the term "employee," courts should conclude that the term was "intended to describe the conventional master-servant relationship as understood by common-law agency doctrine." *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 322-323 (1992) (hereinafter "*Darden*") (quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989)). The Supreme Court stated:

"In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party."

Darden, 503 U.S. at 323-324 (quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. at 751-752); see also *Clackamas Gastroenterology Associates, P.C. v. Wells*, 538 U.S. 440, 445 (2003) (hereinafter "*Clackamas*"). As the common-law test contains "no shorthand formula or magic phrase that can be applied to find the answer, . . . all of the incidents of the relationship must be assessed and weighed with no one factor being decisive." *Darden*, 503 U.S. at 324 (quoting *NLRB v. United Ins. Co. of America*, 390 U.S. 254, 258 (1968)).

In this matter, the Act does not exhibit a legislative intent to extend the definition of "employer" in section 101(a)(15)(H)(i)(b) of the Act, "employment" in section 212(n)(1)(A)(i) of the Act, or "employee" in section 212(n)(2)(C)(vii) of the Act beyond the traditional common law definitions. See generally 136 Cong. Rec. S17106 (daily ed. Oct. 26, 1990); 136 Cong. Rec. H12358 (daily ed. Oct. 27, 1990). On the contrary, in the context of the H-1B visa classification, the regulations define the term "United States employer" to be even more restrictive than the common law agency definition.¹

¹ While the *Darden* court considered only the definition of "employee" under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(6), and did not address the definition of "employer," courts have generally refused to extend the common law agency definition to ERISA's use of employer because "the definition of 'employer' in ERISA, unlike the definition of 'employee,' clearly indicates legislative intent to extend the definition beyond the traditional common law definition." See, e.g., *Bowers v. Andrew Weir Shipping, Ltd.*, 810 F. Supp. 522 (S.D.N.Y. 1992), *aff'd*, 27 F.3d 800 (2nd Cir.), *cert. denied*, 513 U.S. 1000 (1994).

However, in this matter, the Act does not exhibit a legislative intent to extend the definition of "employer" in section 101(a)(15)(H)(i)(b) of the Act, "employment" in section 212(n)(1)(A)(i) of the Act, or "employee" in section 212(n)(2)(C)(vii) of the Act beyond the traditional common law definitions. Instead, in the context of the H-1B visa classification, the term "United States employer" was defined in the regulations to be even more restrictive than the common law agency definition. A federal agency's interpretation of a statute whose administration is entrusted to it is to be accepted unless Congress has spoken directly on the issue. See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844-845 (1984).

The regulatory definition of "United States employer" requires H-1B employers to have a tax identification number, to employ persons in the United States, and to have an "employer-employee relationship" with the H-1B "employee." 8 C.F.R. § 214.2(h)(4)(ii). Accordingly, the term "United States employer" not only requires H-1B employers and employees to have an "employer-employee relationship" as understood by common-law agency doctrine, it imposes additional requirements of having a tax identification number and to employ persons in the United States. The lack of an express expansion of the definition regarding the terms "employee," "employed," "employment" or "employer-employee relationship" indicates that the regulations do not intend to extend the definition beyond "the traditional common law definition." Therefore, in the absence of an intent to impose broader definitions by either Congress or USCIS, the "conventional master-servant relationship as understood by common-law agency doctrine," and the *Darden* construction test, apply to the terms "employee," "employer-employee relationship," "employed," and "employment" as used in section 101(a)(15)(H)(i)(b) of the Act, section 212(n) of the Act, and 8 C.F.R. § 214.2(h). That being said, there are instances in the Act where Congress may have intended a broader application of the term "employer" than what is encompassed in the conventional master-servant relationship. See, e.g., section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (referring to "unaffiliated employers" supervising and controlling L-1B intracompany transferees having specialized knowledge); section 274A of the Act, 8 U.S.C.

Specifically, the regulatory definition of "United States employer" requires H-1B employers to have a tax identification number, to engage a person to work within the United States, and to have an "employer-employee relationship" with the H-1B "employee." 8 C.F.R. § 214.2(h)(4)(ii). Accordingly, the term "United States employer" not only requires H-1B employers and employees to have an "employer-employee relationship" as understood by common-law agency doctrine, it imposes additional requirements of having a tax identification number and to employ persons in the United States. The lack of an express expansion of the definition regarding the terms "employee" or "employer-employee relationship" combined with the agency's otherwise generally circular definition of United States employer in 8 C.F.R. § 214.2(h)(4)(ii) indicates that the regulations do not intend to extend the definition beyond "the traditional common law definition" or, more importantly, that construing these terms in this manner would thwart congressional design or lead to absurd results. *Cf. Darden*, 503 U.S. at 318-319.²

Accordingly, in the absence of an express congressional intent to impose broader definitions, both the "conventional master-servant relationship as understood by common-law agency doctrine" and the *Darden* construction test apply to the terms "employee" and "employer-employee relationship" as used in section 101(a)(15)(H)(i)(b) of the Act, section 212(n) of the Act, and 8 C.F.R. § 214.2(h).³

Therefore, in considering whether or not one will be an "employee" in an "employer-employee relationship" with a "United States employer" for purposes of H-1B nonimmigrant petitions, USCIS must focus on the common-law touchstone of "control." *Clackamas*, 538 U.S. at 450; *see also* 8 C.F.R. § 214.2(h)(4)(ii) (defining a "United States employer" as one who "has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise *control* the work of any such employee" (emphasis added)).

The factors indicating that a worker is or will be an "employee" of an "employer" are clearly delineated in both the *Darden* and *Clackamas* decisions. *Darden*, 503 U.S. at 323-324; *Clackamas*, 538 U.S. at 445; *see also* *Restatement (Second) of Agency* § 220(2) (1958). Such indicia of control include when, where, and how a worker performs the job; the continuity of the worker's relationship with the

§ 1324a (referring to the employment of unauthorized aliens).

² To the extent the regulations are ambiguous with regard to the terms "employee" or "employer-employee relationship," the agency's interpretation of these terms should be found to be controlling unless "plainly erroneous or inconsistent with the regulation." *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359, 109 S.Ct. 1835, 1850, 104 L.Ed.2d 351 (1989) (quoting *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414, 65 S.Ct. 1215, 1217, 89 L.Ed. 1700 (1945))).

³ That said, there are instances in the Act where Congress may have intended a broader application of the term "employer" than what is encompassed in the conventional master-servant relationship. *See, e.g.*, section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (referring to "unaffiliated employers" supervising and controlling L-1B intracompany transferees having specialized knowledge); section 274A of the Act, 8 U.S.C. § 1324a (referring to the employment of unauthorized aliens).

employer; the tax treatment of the worker; the provision of employee benefits; and whether the work performed by the worker is part of the employer's regular business. *See Clackamas*, 538 U.S. at 445; *see also New Compliance Manual*, Equal Employment Opportunity Commission, § 2-III(A)(1) (adopting a materially identical test and indicating that said test was based on the *Darden* decision); *see also Defensor v. Meissner*, 201 F.3d 384, 388 (5th Cir. 2000) (determining that hospitals, as the recipients of beneficiaries' services, are the "true employers" of H-1B nurses under 8 C.F.R. § 214.2(h), even though a medical contract service agency is the actual petitioner, because the hospitals ultimately hire, pay, fire, supervise, or otherwise control the work of the beneficiaries).

It is important to note, however, that the factors listed in *Darden* and *Clackamas* are not exhaustive and must be evaluated on a case-by-case basis. Other aspects of the relationship between the parties relevant to control may affect the determination of whether an employer-employee relationship exists. Furthermore, not all or even a majority of the listed criteria need be met; however, the fact finder must weigh and compare a combination of the factors in analyzing the facts of each individual case. The determination must be based on all of the circumstances in the relationship between the parties, regardless of whether the parties refer to it as an employee or as an independent contractor relationship. *See Clackamas*, 538 U.S. at 448-449; *New Compliance Manual* at § 2-III(A)(1).

Furthermore, when examining the factors relevant to determining control, USCIS must assess and weigh each actual factor itself as it exists or will exist and not the claimed employer's right to influence or change that factor, unless specifically provided for by the common-law test. *See Darden*, 503 U.S. at 323-324. For example, while the assignment of additional projects is dependent on who has the *right* to assign them, it is the *actual* source of the instrumentalities and tools that must be examined, not who has the *right to provide* the tools required to complete an assigned project. *See id.* at 323.

Lastly, the "mere existence of a document styled 'employment agreement'" shall not lead inexorably to the conclusion that the worker is an employee. *Clackamas*, 538 U.S. at 450. "Rather, . . . the answer to whether [an individual] is an employee depends on 'all of the incidents of the relationship . . . with no one factor being decisive.'" *Id.* at 451 (quoting *Darden*, 503 U.S. at 324).

Applying the *Darden* and *Clackamas* tests to this matter, the petitioner has not established that it will be a "United States employer" having an "employer-employee relationship" with the beneficiary as an H-1B temporary "employee."

On the Form I-129 visa petition, the petitioner stated that it is located in [REDACTED], Virginia. Part 5, Item 5 of that form asked the petitioner to reveal the address where the beneficiary would work. The petitioner entered [REDACTED], CA, but did not reveal the street address. The LCA submitted in this matter is valid for employment in [REDACTED] California.

With the petition, counsel provided a photocopy of a contract between the petitioner and [REDACTED]. That contract gives [REDACTED]. The AAO notes that the zip code [REDACTED] corresponds to [REDACTED] California.

In that contract, the petitioner agreed to provide computer professionals to [redacted] on a temporary basis. It indicates that [redacted] would, in turn, provide those workers to its client. It further states that [redacted] may, with the petitioner's consent, reassign any of the petitioner's workers to a different client, and that the petitioner's consent may not be unreasonably withheld. It further states that the petitioner's workers may be required to travel at the client's request, and that the client will reimburse those workers' travel expenses.

That contract contained a clause stating that [redacted] would have the right to hire the petitioner's workers as its own employees. That clause was struck out and the following was added longhand: "The End-Client ([redacted]) can offer employment to [the petitioner's] personnel after 12 months of contractual work ONLY with [the petitioner's] written consent."

Because the evidence submitted did not demonstrate that the visa petition was approvable, the service center, on May 6, 2009, issued an RFE in this matter. The service center requested, *inter alia*: (1) an itinerary of the services the beneficiary would perform and the dates and locations where he would perform them; and (2) contracts and other agreements showing that an end-user or end-users have agreed that the beneficiary would work on their projects, the duties he would perform, the qualifications it requires for the job, a brief description of who will supervise the beneficiary, and their duties.

Counsel also provided a letter, dated June 10, 2009, from [redacted] on letterhead of [redacted] California. The body of that letter reads, in its entirety:

This letter is to confirm that [the beneficiary] is a full[-]time employee of [the petitioner]. He has been engaged to supply [redacted] Systems and software engineering expertise for Data warehousing applications.

[The petitioner] is responsible for the conduct and work of each of its team members, supplies the team with laptops and other tools and directly supervises the team's day-to-day activities along with [redacted] Project Managers.

The AAO notes that, because that letter does not state that the beneficiary would continue working on that project throughout the entire period of requested employment, from May 15, 2009 to May 15, 2012, it cannot qualify as the itinerary requested in the May 6, 2009 RFE. Further, although the letterhead indicates that [redacted] has an address in [redacted] California, it does not state that the beneficiary would work at that address, or in that city, or nearby. Further still, that letter does not state the end-user's requirements for performance of the beneficiary's duties, which the service center expressly requested in the RFE. Finally, although that letter states that the petitioner directly supervises its workers activities, it did not identify the supervisor who would supervise the beneficiary's work, nor even explicitly state that the supervisor works at [redacted] site, nor explain the substantive extent of the petitioner's supervision and how it compares with the supervision exercised by [redacted] project managers, and, for that matter, by [redacted] the intermediate entity.

The director denied the visa petition on June 17, 2009 finding, *inter alia*, as was noted above, that the petitioner had not demonstrated that it had standing to file the visa petition as the beneficiary's employer or agent.

On appeal, counsel asserted that the relationship between the petitioner and the beneficiary has various indices of an employer/employee relationship. Counsel stated that the June 10, 2009 letter from [REDACTED] confirms that the beneficiary would work in [REDACTED] California. The AAO notes that the letter does not state where the beneficiary would work.

To qualify as a United States employer, a petitioner must satisfy all three of the criteria at 8 C.F.R. § 214.2(h)(4)(ii). Further, the petitioner must satisfy the criteria at the time that the petition is filed. This is obvious in the plain reading of 8 C.F.R. § 214.2(h)(2)(i)(A). USCIS regulations require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 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. 1978). Therefore, the director correctly concentrated upon whatever evidence the record might contain of work existing for the beneficiary at the time the petition was filed.

With regard to the requirement at 8 C.F.R. § 214.2(h)(4)(ii)(2) that a U.S. employer have an employer-employee relationship with its beneficiary, the AAO notes that the petitioner is located in [REDACTED] Virginia, and proposes that the beneficiary would work, for at least some portion of the period of requested employment, in California. That he would work there during the entire period of requested employment has not been demonstrated, nor even clearly alleged. Where he might work during other portions of that period is unknown.

The petitioner has alleged that it supervises the beneficiary's performance in California, and provided a letter from [REDACTED] that states that it, along with [REDACTED] project managers, supervises that performance. It did not state how that is accomplished, given that the petitioner has indicated that the beneficiary will not work at the petitioner's location. The petitioner did not identify a supervisor who works, or would work, with the beneficiary at [REDACTED] location. Further, there is insufficient evidence in the record of proceeding that specifies the content of the asserted supervision by the petitioner, which, the AAO notes, is almost 3,000 miles from the beneficiary's projected location, assuming that the beneficiary works somewhere in California. Having not demonstrated that it would determine, assign, and directly control the work that the beneficiary would perform for VISA, the petitioner has not demonstrated that it has the requisite employer-employee relationship with the beneficiary. Further, even if the petitioner directly supervised the beneficiary's work for [REDACTED], its contract with [REDACTED] states that [REDACTED] may transfer the beneficiary to provide services to some other, unidentified, client in some unspecified location. Whether the petitioner would supervise the beneficiary's performance in other locations is not stated and is unknown to the AAO. Whether, in that event, the petitioner would have an employer/employee relationship with the beneficiary is unclear. Further still, the petitioner has agreed that after one year of contract work another entity may hire the beneficiary directly as its own employee. Under those circumstances, the beneficiary

would clearly not supervise the beneficiary's performance and the petitioner would clearly not have an employer-employee relationship with him.

For the reasons discussed above, the AAO finds that the petitioner has not satisfied the second criteria of 8 C.F.R. § 214.2(h)(2)(i)(A). Therefore, the director's decision that the petitioner has not demonstrated that it has standing to file the visa petition will not be disturbed. The appeal will be dismissed, and the petition will be denied on this basis.

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

The petitioner has indicated that it would provide the beneficiary to [REDACTED], through [REDACTED] and possibly other intermediaries, to work on [REDACTED] projects. The court in *Defensor v. Meissner*, 201 F.3d 384 observed that where work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. 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. Such evidence must be sufficiently detailed and demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

In the instant case, the only indication from [REDACTED] of the work the beneficiary would perform on its projects is the statement in the June 10, 2009 letter that the beneficiary has been engaged to supply [REDACTED] with systems and software engineering expertise pertinent to data warehousing operations. The AAO cannot construe that short and abstract statement of duties to show that the beneficiary would be working in a specialty occupation while working on [REDACTED] project or projects.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under 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's 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.

Further, the record lacks sufficient evidence establishing that the beneficiary would work on [REDACTED] projects throughout the period of requested employment. In fact, the petitioner's contract with [REDACTED] states, as was noted above, that [REDACTED] may assign him to a different end-user. If [REDACTED] need for his services expires prior to the end of the period of requested employment, then where, and whether, he would work during the balance of that period has not been demonstrated, nor even addressed. Whether the petitioner has specialty occupation work, or any work at all, for the beneficiary to

perform during any balance of that period is not demonstrated by the evidence. The petitioner has further agreed that, after one year of contract work, [REDACTED] is free to hire the beneficiary as its own employee. The record does not indicate what position [REDACTED] might fill with the beneficiary, and does not demonstrate that the work the beneficiary would perform under those circumstances would qualify as employment in a specialty occupation. For these additional reasons, the AAO cannot find that the beneficiary would be employed in a specialty occupation throughout the period of requested employment.

Yet further, the LCA submitted to support the visa petition is valid for employment in [REDACTED], California. Counsel submitted a letter from [REDACTED] which states that the beneficiary is presently working on its projects, and whose letterhead indicates that it has an office in [REDACTED]. It does not, however, state where the beneficiary would work, whether in [REDACTED] or in some other location. Further, the contract between the petitioner and [REDACTED] contains terms pursuant to which the beneficiary would travel to other locations, if requested by the client, [REDACTED]. Further still, the letter from [REDACTED] does not state that it would continue to use the beneficiary's services throughout the period of requested employment. Where else the beneficiary might work during the period of requested employment, and whether the [REDACTED] is valid for employment in that other location or those other locations, has not been demonstrated. The petitioner has not, therefore, demonstrated that the [REDACTED] is valid for all of the locations where the beneficiary would work during the period of requested employment. For this additional reason, the appeal will be dismissed and the visa petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied and the appeal dismissed 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, and the petition is denied.