



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 26 2013 OFFICE: VERMONT SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 initially approved the nonimmigrant visa petition. Upon subsequent review of the record, the director issued a notice of intent to revoke (NOIR), and ultimately revoked 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.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on November 12, 2010. In the Form I-129 visa petition, the petitioner described itself as a business networking systems and solutions company established in 2005.¹ The petitioner indicated that it has one employee.² In addition, the petitioner listed its gross annual revenue as \$250,000. The petitioner failed to state its net annual income in the Form I-129 petition.³ In order to employ the beneficiary in what it designated as an operations manager position, the petitioner sought to classify her 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).

¹ In the Form I-129, the petitioner designated its business operations under the North American Industry Classification System (NAICS) code 54151 – "Computer Systems Design and Related Services." The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This industry comprises establishments primarily engaged in providing expertise in the field of information technologies through one or more activities, such as writing, modifying, testing and supporting software to meet the needs of a particular customer, including the creation of Internet home pages; planning and designing computer systems that integrate hardware, software and communication technologies; on-site management and operation of clients' computer and data processing facilities; providing advice in the field of information technologies; and other professional and technical computer-related services.

See U.S. Dept't of Commerce, U.S Census Bureau, 2007 NAICS Definition, 54151 – Computer Systems Design and Related Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited May 15, 2013).

² In response to the director's request for additional evidence (RFE), the petitioner indicated that it has two employees: [REDACTED] who performs administrative duties.

³ The petitioner stated in the Form I-129 its intention to employ the beneficiary in a position it designates as an "Operations Manager." The AAO notes that it is reasonable to assume that the size and/or scope of an employer's business has, or could have, an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through the attainment of a baccalaureate degree or higher in a specific specialty, or its equivalent. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties.

The petition was approved on May 12, 2011. Subsequent to the petition's approval, the United States Consulate in Cape Town returned the petition to the director for review. The Consulate notified U.S. Citizenship and Immigration Services (USCIS) that, during the course of the visa interview, the beneficiary presented information that was not available to USCIS at the time the petition was approved. Specifically, the Consulate indicated that the beneficiary did not appear to be qualified to perform services in a specialty occupation position because her prior work experience was clerical in nature. The Consulate further indicated that the beneficiary provided a description of the proffered position that was different from other descriptions submitted to USCIS with the initial petition, and which indicated that the position does not qualify as a specialty occupation.

Thereafter, the director issued a NOIR to the petitioner. The NOIR contained a detailed statement regarding the information that USCIS had obtained from the Consulate in Cape Town, and notified the petitioner that it was afforded an opportunity to provide evidence to overcome the stated grounds for revocation. The petitioner responded to the NOIR with a letter from its President and additional evidence. The director reviewed the petitioner's response but found the information submitted insufficient to refute the findings in the NOIR. The director revoked approval of the petition on April 16, 2012. Thereafter, the petitioner filed an appeal.

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

As will be discussed below, the AAO finds that the petitioner has not overcome the specified grounds for revocation. Accordingly, the appeal will be dismissed, and the approval of the petition will remain revoked.

USCIS may revoke the approval of an H-1B petition, on notice and an opportunity to rebut, pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which 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.

As a preliminary matter, the AAO finds that the bases specified for the revocation action in the instant matter are proper grounds for such action. The director's statements in the NOIR regarding the evidence indicating that the beneficiary is not qualified to perform services in a specialty occupation and that the proffered position did not appear to be a specialty occupation were adequate to notify the petitioner of the intent to revoke the approval of the petition in accordance with the provision at 8 C.F.R. § 214.2(h)(11)(iii)(A)(2) and (5).

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 credibly establish that it will provide qualifying H-1B employment to the beneficiary in accordance with the applicable statutory and regulatory provisions. The petitioner has not provided sufficient evidence that it would employ the beneficiary in the capacity specified in the petition and it has not established that the statement of facts contained in the petition is accurate.

In this matter, the petitioner stated on the Form I-129 that it seeks the beneficiary's services as an operations manager on a full-time basis at the rate of pay of \$43,680 per year. On Part 5, Question 2 of the Form I-129, which asks the petitioner to provide a "Nontechnical Job Description," the petitioner stated that the beneficiary will "[s]et goals and deadlines for the organization." In a support letter dated October 26, 2010, the petitioner stated that the proffered position includes the following duties:

1. Oversee scripts that query network devices and to gather statistics.
2. Manage scripts to generate reports based on raw data gathered from previous scripts/documentation and existing data in flat files or data basis [sic].
3. Overseeing the health of the network and comparing data quality control/validation or network changes
4. To ensure that changes went according to plan and no anomalies occurred.
5. Analyze and evaluate end user's needs.
6. Implement testing of said scripts.
7. Ensure that systems and networks can handle data/transaction volume.

8. Be responsible for performance monitoring and upgrades
9. Will participate in meetings by arranging and setting up conferences.
10. Generating reports and serving as Operations Manager to the President of [the petitioner]
11. Capturing of critical data for the potential client for the sole input of establishing a design suitable for the use by the client.
12. Will be responsible for preparing reports generated from the data base for presentation at meetings.
13. Analyze and recommend any changes that could be beneficial to the client.
14. Will use the internet to research market conditions to better benefit the company in that regional area of practice and to suggest alternate solutions.
15. Oversee office management and liaisons with clients when President is not available or out at meetings.

In its support letter, the petitioner stated the minimum educational qualifications for the proffered position as "at least a Bachelor degree or equivalent experience and training." The petitioner indicated that the beneficiary is qualified to perform duties in the position by virtue of her "diploma in Medical Office Specialist," and her prior work experience. In support of the petition, the petitioner provided (1) an evaluation of the beneficiary's credentials prepared by [redacted] of the University of Maryland; (2) an unsigned, undated document entitled "Job Description" from the Surveyor-General of Cape Town, Department of Land Affairs; (3) a document entitled "Addendum to Certificate of Service for [redacted] while in the employ of the [redacted] dated October 29, 2010; (4) a letter from [redacted] dated October 23, 2010; (5) a document entitled "Certificate of Service" from the Department of Land Affairs" dated March 9, 1998; (6) a letter from [redacted] (7) a letter from [redacted] dated September 9, 2010; (8) training course certificates in the name of the beneficiary; (9) a diploma and transcript from [redacted] Community College indicating that the beneficiary has a "specialized diploma of Medical Office Specialist"; and (10) the beneficiary's resume.

In addition, the petitioner submitted an LCA in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification "General and Operations Managers" - SOC (ONET/OES Code) 11-1021, at a Level I (entry level) wage.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on March 17, 2011. The director outlined the evidence to be submitted. The AAO notes that the director specifically requested that the petitioner submit probative evidence to

establish that the proffered position qualifies as a specialty occupation.

On April 27, 2011, the petitioner's counsel responded to the director's RFE by providing a letter and additional evidence, including (1) a letter from the petitioner dated March 30, 2011 describing the petitioner's business operations; (2) a letter from the petitioner dated March 30, 2011 with a revised list of duties; (3) a letter from the petitioner dated March 30, 2011 describing the percentage of time that the company spends performing various tasks; (4) a "Consulting Agreement" between [REDACTED], which lists the petitioner's president as a consultant for [REDACTED] for work to be performed between January 11, 2010 and September 30, 2010; (5) a document entitled "Exhibit F: Form of Assignment Agreement," dated November 3, 2010, which indicates that the petitioner's president assigns to ADP title to any work that he completes on [REDACTED] behalf; (6) a document entitled "Exhibit I: Additional Conditions for Engagement at Automatic Data Processing, Inc.," dated November 3, 2010, in which the president of the petitioner indicates that his "employer" is [REDACTED]; (7) a document entitled "Reporting Security Incidents and Violations," dated November 3, 2010, in which the petitioner's president agrees that he has received, read, and understood the Information Security Responsibilities; (8) a document entitled "10 years Employment History or 4 employers" on [REDACTED] letterhead, dated November 8, 2010, in which the petitioner's president is listed as a "consultant," and represents that he worked for [REDACTED] from March 3, 1997 to November 8, 2010 as a network engineer; (9) a "Candidate Release Authorization," from [REDACTED] dated November 3, 2010; (10) an undated document entitled "Nondisclosure Agreement," between the petitioner's president and [REDACTED]; (11) a document entitled "II. Complaint Procedure," dated November 3, 2010, signed by the petitioner's president; (12) a document entitled "Exhibit H: Benefits Acknowledgement Form," dated November 3, 2010, signed by the petitioner's president; (13) a letter from the petitioner dated March 30, 2010 listing the duties of [REDACTED]; (14) W-2s for 2009 issued by the petitioner to [REDACTED] the petitioner's president; (15) a marriage certificate dated December 15, 1984 documenting the marriage of the petitioner's president to [REDACTED] and (16) an unsigned tax return in the name of the petitioner for 2009.

In a letter dated March 30, 2011, submitted in response to the RFE, the petitioner stated the following regarding the proffered position (bullet points added by AAO for clarity):

- [The beneficiary's] duties with [the petitioner] would considerably help with the workload as she would be responsible for taking on most of the administrative networking load.
- She would be responsible for handling and researching data for the clients so that their databases can be accessed.
- She would be responsible for generating reports and acquiring critical data and implementing them so that the scripts are run proficiently and accurately.
- She would be responsible for helping to maintain the scripts for the clientele and updating the scripts as needed for the clients. Maintaining scripts and updating them is a constant requirement as the clients needs change constantly. Different platforms and tiers are constantly being added.

- She would be responsible for all technical meetings with new clients in respect to what their company requires in terms of scripts, which would allow [the petitioner] more time to concentrate on scripts already running.
- She would be responsible for monitoring the network usage of our systems.
- She would be required to create spreadsheets for the client's servers.
- Provide and maintain statistics on the network as required.
- She will be responsible for reviewing and implementing the validation of the new scripts.
- She will be responsible for running tests on scripts before they are sent back to the clients to make sure that the script fulfills the needs of the clients and correcting them if so required.
- Gather and validate Business Requirements for minor system enhancements, defect correction and non-functional upgrades and patches.
- She would be required to stand in for the President when he is unavailable or out of town for meetings with clients.

(Errors in the original). The director approved the petition on May 12, 2011. Thereafter, the beneficiary was interviewed by the Consulate in Cape Town, South Africa. In a memorandum dated January 6, 2011, the consular officer advised USCIS that the beneficiary provided a job description from the petitioner that differed from the original job description provided, that the beneficiary did not demonstrate an understanding of the technical aspects of the proffered position, and that the beneficiary indicated that her prior work experience was substantially clerical in nature. The memo further indicates that the Consulate undertook an investigation with regard to the beneficiary's prior work experience and confirmed that the beneficiary's prior positions were comprised almost entirely of clerical duties.

The job description, dated July 15, 2011, which was provided to the consular officer, states the following job duties of the proffered position:

- Manage data to generate reports based on information gathered from previous documentation and existing data in flat files or data basis.
- Ensure that changes go according to plan and no anomalies occurred.
- Analyze and evaluate end user's needs.
- Ensure that systems and networks can handle data/transaction volume.
- Be responsible for monitoring data and upgrading information.
- Participate in meetings by arranging and setting up conferences.
- Generating reports and creating spreadsheets for the client's.
- Capturing of data for the potential client for the sole input of establishing a design suitable for the use by the client.
- Will be responsible for preparing reports generated from the data based for presentation at meetings.
- Analyze and recommend any changed that could be beneficial to the client.
- Will use the internet to research market conditions to better benefit the company in that regional area of practice and to suggest alternate solutions.

- Oversee office management, liaise with clients and represent [the petitioner] when President is not available or out at meetings.

(Errors in the original.)

The director reviewed the memorandum and attached documentation, and issued a NOIR to the petitioner on April 16, 2012. Enclosed with the NOIR was a copy of the memorandum from the U.S. consulate in Cape Town. The NOIR contained a detailed statement regarding the deficiencies of the petition and notified the petitioner that it was afforded an opportunity to provide evidence to overcome the stated grounds for revocation. In the NOIR, the director included an extensive list of suggested documentation that the petitioner might provide as part of its response.

The petitioner responded to the NOIR on May 14, 2012, by submitting a letter and additional evidence, including (1) a statement from the beneficiary regarding her consular interview in Cape Town; (2) a description of the proffered position dated July 15, 2011; (3) a letter from [redacted] of the University of Maryland, dated May 22, 2011; (4) a letter from the department of [redacted] dated April 24, 2012; (5) an undated letter from [redacted] regarding the beneficiary's job duties with that company; (6) a printout from the [redacted] regarding OES/SOC Code 11-1021 for East Central Pennsylvania nonmetropolitan area; (7) several job postings; (8) an additional statement from the petitioner regarding the issue of whether the proffered position qualifies as a specialty occupation; (9) an additional description of the job duties of the proffered position, dated May 7, 2012, including a general breakdown of the times spent on the varying duties; (10) a job description for the petitioner's president, dated May 4, 2012; (11) a job description for [redacted] dated May 4, 2012; and (12) additional copies of previously submitted evidence.

The description of the proffered position submitted in response to the NOIR, dated May 7, 2012, provides the following breakdown of the percentage of time spent on the following duties:

Managing data, generating reports, analyzing and evaluating users needs, monitoring data and upgrading information, capturing data, recommending or any changes for the client, ensuring that networks can handle data/volume - 55%

Participate in meetings, generating reports and creating Spreadsheets, research on the internet, oversee office Management, liaise with clients, represent [the petitioner] at Meetings, when President is unavailable. - 45%

(Errors in the original.)

The director reviewed the petitioner's response but found the information submitted insufficient to refute the findings in the NOIR. Specifically, the director indicated that the evidence of record failed to establish that the beneficiary would be employed in a specialty occupation position, or that the

beneficiary is qualified to perform the duties of a specialty occupation. The director revoked approval of the petition on August 17, 2012.

Thereafter, the petitioner submitted an appeal. On appeal, the petitioner asserts that the evidence submitted establishes that the proffered position is a specialty occupation, and that the beneficiary is qualified to perform services in the position. In support of the appeal, the petitioner provided several additional job postings, and copies of previously submitted documents.

Upon review of the record of proceeding, there are numerous inconsistencies and discrepancies in the petition and supporting documents, which undermine the veracity of the petitioner's statements with regard to the services the beneficiary will perform, as well as the actual nature and requirements of the proffered position. When a petition includes numerous discrepancies, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions.

When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, U.S. Citizenship and Immigration Services (USCIS) looks 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. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

In the instant case, the petitioner has provided inconsistent information regarding the requirements of the proffered position. Furthermore, the petitioner's statements regarding the academic requirements for the operations manager position do not establish that the position qualifies as a specialty occupation.

That is, in a letter of support dated October 26, 2010, submitted with the initial petition, the petitioner stated the minimum education requirements for the proffered position as "at least a Bachelor degree or equivalent experience and training." In a letter dated May 4, 2011 submitted in response to the NOIR, the petitioner asserted that the proffered position requires a "Bachelor's degree in Business Studies, or the professional equivalent thereof." In a letter dated September 10, 2012 submitted on appeal, the petitioner states that the "*preferred* Bachelor's Degree would be in Business, or a related area, or the equivalent." (Emphasis added.) No explanation was provided for the variance. The AAO observes that none of the three distinct education requirements stated by the petitioner are sufficient to qualify the proffered position as a specialty occupation. The AAO notes that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the position. See 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the

position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business studies, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).⁴

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree. That is, the petitioner stated that a bachelor's degree (no specific discipline) is acceptable, and, thereafter, claimed that a degree in business studies is either sufficient or preferred for the proffered position. The petitioner's assertions are tantamount to an admission that the proffered position is not in fact a specialty occupation.

Further, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through completion of at least a baccalaureate degree in a specific discipline. The AAO finds that the petitioner has not done so.

The record in this matter contains five distinct descriptions of the proffered position provided by the petitioner. The AAO notes that the "nontechnical job description" that the petitioner provided in Part 5, Question 2 of the Form I-129 indicates that the beneficiary will "[s]et goals and deadlines for the organization." This duty does not appear in any of the four subsequent descriptions of the proffered position. The AAO notes that in stating that the beneficiary will "[s]et goals and deadlines for the

⁴ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* the following:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

organization," the petitioner suggests that the beneficiary will be employed in a managerial capacity. However, all of the detailed job descriptions provided by the petitioner indicate that the beneficiary will be performing a support role in the organization, as opposed to serving in a leadership capacity.

The description of the proffered position provided by the petitioner in a letter dated October 26, 2010, states that the beneficiary will, among other duties: "[o]versee scripts that query network devices and to gather statistics"; "[m]anage scripts to generate reports based on raw data gathered from previous scripts/documentation and existing data in flat files or data basis"; "[oversee] the health of the network and comparing data quality control/validation or network changes"; "ensure that changes went according to plan and no anomalies occurred"; "[i]mplement testing of said scripts"; "[e]nsure that systems and networks can handle data/transaction volume"; and "[b]e responsible for performance monitoring and upgrades." These duties appear to indicate that the beneficiary is required to have substantial knowledge of scripts, such that she can "manage" scripts; "oversee" scripts; and "implement testing of said scripts." Further, the duties indicate that the beneficiary is required to have substantial knowledge of computer systems and networks, such that she can ascertain what level of data and transactions the "systems and networks can handle."

In response to the director's RFE, the petitioner provided a different set of duties involving scripts and the petitioner's computer network. Specifically, the petitioner stated that the beneficiary would "be responsible for helping to maintain the scripts for the clientele and updating the scripts as needed for the clients"; "be responsible for all technical meetings with new clients in respect to what their company requires in terms of scripts"; "be responsible for monitoring the network usage of our systems"; "be responsible for reviewing and implementing the validation of the new scripts"; and "be responsible for running tests on scripts before they are sent back to the clients to make sure that the script fulfills the needs of the clients and correcting them if so required." Like the duties provided with the initial petition, these duties also indicate that the beneficiary requires substantial knowledge of scripts in order to "hold technical meetings with new clients" regarding their requirements for scripts, to run tests on scripts, and to "correct them if so required." The duties also suggest that the beneficiary must have knowledge of computer networks in order to "monitor the network usage" of the petitioner's systems.

The job description dated July 15, 2011, provided to the U.S. consulate in Cape Town, omits all references to "scripts." However, the description suggests that the beneficiary must have some level of technical knowledge in order to "ensure that systems and networks can handle data/transaction volume," and to "[b]e responsible for monitoring data and upgrading information." Notably, in this description of the proffered position the beneficiary will not "hold technical meetings with new clients," nor will she not run tests on scripts or "correct them" if required.

In response to the NOIR, in a letter dated May 4, 2011, the petitioner's president explains that the proffered position is not technical in nature. Specifically, the petitioner states that "all writing of scripts is done by [the petitioner's president], a Network Manager/IT Engineer for which he is qualified," and that the proffered position does not include writing scripts. He further clarifies that "testing of scripts" is automated. In addition, he states that the beneficiary would be "maintaining, analyzing, generating, overseeing and the healthy running of the network for said scripts or data." No explanation as to what tasks these duties entail is provided. However, the petitioner clarified that "monitoring the health of the

network" consists of actions such as "logging on to each machine, [and] monitoring the log files." Further, the petitioner explained that reports are generated using a "built-in reporting tool" that requires only "front-end interface." He further states that prior experience with generating reports is not required to perform this function. Notable, the petitioner states that the proffered position does not require "IT" [information technology] experience.

The AAO finds that the petitioner's letter dated May 4, 2011 offers a materially different description of the proffered position than that provided in support of the initial petition and in response to the RFE. The position descriptions provided in support of the Form I-129 and in response to the RFE clearly require technical knowledge of scripts. Despite the opportunity provided by the RFE to clarify the nature of the proffered position, the petitioner elected to continue to represent that the proffered position required technical knowledge of scripts. Only in response to the NOIR, did the petitioner represent the proffered position as not requiring technical knowledge or IT experience. Thus, the AAO finds that "[t]he statement of facts contained in the petition was not true and correct," which is standard basis for revoking the approval of an H-1B petition. 8 C.F.R. § 214.2(h)(11)(iii)(A)(2).

Further, the AAO observes that the petitioner provided varying descriptions of the proffered position which appeared to require technical skills. The petitioner then, in response to the NOIR, explained that the duties, which appear technical in nature, do not actually require any technical knowledge or skills. Thus, the AAO finds that the descriptions of the proffered position, as provided by the petitioner, do not convey the substantive nature of the actual work that the beneficiary would perform. The AAO observes that, based on the disparity between the language used to describe the duties and the nature of the substantive tasks required to perform the duties, the information provided by the petitioner does not in itself establish a correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. The AAO also observes, therefore, that it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described, the AAO finds the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire period requested, so as to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the duties and responsibilities of the proffered position. Moreover, the job descriptions in the record of proceeding fail to communicate (1) the actual work that the beneficiary would perform on a day-to-day basis; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The petitioner's assertion with regard to the educational requirement for the position is conclusory and unpersuasive, as it is not supported by the job description or probative evidence. Furthermore, the AAO again notes that the level of education required to perform the duties of the proffered position, as described by the petitioner, is insufficient to qualify the position as a specialty occupation.

The AAO further notes that when a petitioner fails to resolve discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the

petitioner's assertions. The record of proceeding lacks documentary evidence that establishes or corroborates the substantive nature of the beneficiary's duties. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As previously mentioned, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent, objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Accordingly, as the petitioner has not presented a cohesive account of the duties and responsibilities that the beneficiary would perform as its operations manager, it has failed to meet its burden of demonstrating that the proffered position is a specialty occupation.

As the petitioner failed to establish that the proffered position is a specialty occupation, the AAO need not fully examine whether the beneficiary has the qualifications to hold a specialty occupation position. Nevertheless, the AAO notes that the evaluation of the beneficiary's training and experience submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty. Specifically, as the claimed equivalency was based on training and experience, the evaluator of the beneficiary's credentials must establish that he has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience and that the beneficiary also has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1).

The petitioner submitted an evaluation of the beneficiary's credentials by Professor Zhi-Long Chen, who claims that in his position at the [REDACTED] of the University of Maryland (UMD), he has "the authority to grant college level credit for experience, training, and/or courses taken at other U.S. or international universities." In support of this assertion, the petitioner provided a May 22, 2011 letter from [REDACTED] the dean of the [REDACTED] School of Business. [REDACTED] states that "[REDACTED] authorizes the granting of credit to students for completion of degree program requirements." The letter further reports that Professor [REDACTED] is "qualified to evaluate foreign education and experience as to the academic equivalent in the United States." According to [REDACTED] the university "offers academic programs in which students are granted credit based on course work, training, and experience in a wide range of fields."

However, despite [REDACTED] assertions, the UMD website indicates that the university does not award credit for experiential learning that is not undertaken under the supervision of University of Maryland faculty. Specifically, the website includes a section entitled "Frequently Asked Questions" regarding transfer credit to the university. In response to the question "Can I receive credit . . . for work experience?" the website states the following:

The University of Maryland does not award credit for non-traditional or experiential learning not supervised by our own faculty. Examples include internships, externships, practicum, or co-op work. Nor will we transfer credits awarded at other institutions for such work. In some instances, we may recommend sitting for a departmental exam or attempting to earn credit through the College-Level Examination Program.

University of Maryland, The Transfer Credit Center, available on the Internet at <http://www.tce.umd.edu/faq.html#ans14> (last accessed May 15, 2013).

There is no evidence in the record to suggest that the beneficiary's work was supervised by a University of Maryland faculty member to render it eligible for college credit at the university. Additionally, [REDACTED] letter does not state that [REDACTED] has the authority to grant college-level credit for "work" experience nor that UMD has a program for granting such credit based on an individual's work experience. Thus, the petitioner has not established that [REDACTED] is competent to evaluate the educational equivalency of the beneficiary's work experience for the purpose of this proceeding. Accordingly, the AAO accords no weight to the assessment of the beneficiary's work experience, and no weight to the ultimate conclusion of the evaluator that the beneficiary holds the equivalent of a U.S. bachelor's degree.

In conclusion, based upon a complete review of the record of proceeding, the petitioner has failed to overcome the grounds specified in the NOIR, and the approval of the petition remains revoked.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met.

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