



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **MAY 17 2013** Office: CALIFORNIA 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:

[REDACTED]

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 with the field office or service center that originally decided your case by filing a 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 service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition the petitioner stated that it is a real estate, remodeling, and property management firm with one employee. To employ the beneficiary in what it designates as a Business/Project Analyst position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. The director also found that the petitioner had not established that a reasonable and credible offer of employment exists in this case and that, in any event, the beneficiary did not appear to be entitled to an extension past the six-year limit normally imposed on H-1B visas by 214(g)(4) of the Act, 8 U.S.C. §1184(g)(4).

On appeal, counsel asserted that the director's bases for denial were erroneous, and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on each of the bases specified in her decision. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

With the visa petition, counsel provided evidence that the beneficiary received a bachelor of commerce degree from the [REDACTED] in Bangladesh, and evidence pertinent to the beneficiary's employment experience. Counsel submitted an evaluation of the beneficiary's degree awarded by the [REDACTED] indicating that it is equivalent to three years of undergraduate study in business administration in the United States. It also states that the beneficiary's education and employment experience, taken together, are equivalent to a U.S. bachelor's degree in business administration and management.

Counsel also submitted, *inter alia*, a letter, dated December 3, 2009, from the petitioner's president, who provided the following description of the duties of the proffered position:

- Develop, implement, execute, update, and monitor projects including planning, scheduling, and cost control activities
- Responsible for cost and schedule status reporting, forecast reviews and other reporting tasks

- Monitors scope, budget, schedules and work in progress to ensure project plans and [sic] implemented effectively
- Responsible for identifying and tracking all changes or potential changes to the project scope ensuring estimates of cost changes and schedule impacts are communicated to the client and project management
- Participate in estimating and bid review activities
- Perform marketing analysis and promotions activities
- Select, retain, evaluate and provide leadership to team members
- Other duties as assigned

The petitioner's president also stated that the proffered position requires a "Bachelor's degree in Business Administration and Management or a closely-related major."

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE On March 31, 2010. The petitioner was asked to submit documentation to establish (1) that the proffered position qualifies for classification as a specialty occupation, (2) the beneficiary's eligibility for an extension beyond the six-year maximum period for H-1B status, and (3) that the beneficiary was in a valid nonimmigrant status at the time the instant petition was filed. The director also requested additional documentation substantiating the information provided by the petitioner in the Form I-129. The director outlined the specific evidence to be submitted.

In response, counsel submitted, *inter alia*, the following documents: (1) five vacancy announcements; (2) a letter from counsel dated May 11, 2010; (3) the petitioner's brochure; (4) the petitioner's lease for [REDACTED]; (5) a copy of an I-140, Immigrant Petition for Alien Worker approval notice dated March 20, 2006, pertaining to [REDACTED] and (6) copies of the beneficiary's Form W-2 Wage and Tax Statements for 2008 and 2009.

In his May 11, 2010 letter, counsel reiterated the duties of the proffered position as described in the December 3, 2009 letter from the petitioner's president, but with the percentages of the beneficiary's time that would be spent on each duty. Counsel stated, "In view of the detailed description already furnished . . . the Petitioner fails to understand what additional details are required by [the service center]." Counsel further stated, "This is an entry-level position with no supervisory responsibilities." Counsel also stated, "A bachelor's degree in Business Administration, Management or a closely[-]related major is the employer's and industry-wide minimum requirement for this position."

As to the bona fides of the proffered position, counsel stated that the "[p]etitioner's business has been in existence for 12 years and has assets worth \$430,000. Therefore, there can remain no doubts as to the bona fides of their business, and consequently, the job offer."

The director denied the petition on June 24, 2010, finding, *inter alia*, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director also found that "it is not clear in this case that the bona fide Business Analyst/Management Analyst position exist[s] within the petitioner's business." Noting that the petitioner failed to submit specifically requested documents pertaining to the petitioner's business such as the petitioner's 2007, 2008, and 2009 federal income tax returns, the director found that "[USCIS] is [not] able to evaluate the petitioner's current financial and operating condition"

With respect to the question of whether the beneficiary is entitled to a seventh-year H-1B extension, the director found that the copy of the Form I-140 approval pertained to someone other than the beneficiary, thus, it could not be used to substantiate the beneficiary's eligibility to extend his H-1B nonimmigrant status beyond the six-year limit.

On the Form I-290B, counsel stated the following:

1. The decision of the Director is arbitrary, capricious and contrary to the weight of the evidence[.]
2. The Director's assessment that the supplementary description of the position offered "appear very vague and generic in nature" is subjective and has no factual basis.
3. The Director did not address the petitioner's contention, supported by US Federal Court and AAO decisions, that the position involving market research requires a bachelor's degree, and is thus a specialty occupation.
4. Even though the petitioner has otherwise adequately demonstrated its status as an employer within the meaning of the applicable statute and regulations, the Director denied the petitionon [sic] on the ground that the petitioner did not submit specific documents requested by the her [sic]. Neither the applicable statute nor regulations name any particular document as essential for evidencing its eligibility as an employer.
5. Due to inadvertance [sic], the approval notice for form I-140 that was submitted earlier was for another beneficiary sponsored by the petitioner. The approval notice for the beneficiary of the subject petition is herewith attached.

Although counsel checked box B in Part 2 of that Form I-290B, indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days, no further evidence or argument was submitted.

The AAO will first address the specialty occupation basis of denial.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a

specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

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

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

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, the position must also meet one of the following criteria:

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT*

Independence Joint Venture v. Federal Sav. and Loan Ins. Corp., 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *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.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

As a preliminary matter, the petitioner's claim that a "Bachelor's degree in Business Administration and Management or a closely[-]related major" is a minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. 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 or business administration, 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 prove 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. As discussed *supra*, 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 or business administration, 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 at 147.¹

Again, the petitioner in this matter claims and submits evidence to the effect that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

The AAO also finds that despite the director's request for additional evidence demonstrating that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the record is devoid of substantial documentary evidence as to the specific duties of the proffered position. Given the lack of detail and corroborating evidence, the AAO cannot determine that the proffered position substantially reflects the duties of a Business/Project Analyst.

In the instant case, the record does not make clear what the precise nature of the petitioner's business is. Although the petitioner stated on the Form I-129, that it is a real estate, remodeling, and property management firm, a brochure in the record indicates that the petitioner provides the following services:

Save your home, stop the foreclosure, reduce the amount you owe, and end up with mortgage payments you can afford.

¹ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[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.

* * *

We Show You The Path To Saving Your Home

* * *

We Develop A Plan For You That Works

* * *

We Deal With The Banks & Mortgage Company For You

* * *

We Lease Your Home Back To You With A Re-Purchase Option

The director noted in the decision of denial that the petitioner claimed on the Form I-129 visa petition to work in real estate, remodeling, and property management, and that those services are not closely related to that claimed line of business.

The description of the duties of the proffered position states that the beneficiary would "Develop, implement, execute, update, and monitor projects including planning, scheduling, and cost control activities." That description further states that the beneficiary would be "Responsible for cost and schedule status reporting, forecast reviews and other reporting tasks," also, presumably, pertinent to those projects. It further states that the beneficiary would "Monitor[] [the] scope, budget, schedules and work in progress to ensure project plans [are] implemented effectively," and would be "Responsible for identifying and tracking all changes or potential changes to the project scope ensuring estimates of cost changes and schedule impacts are communicated to the client and project management."

The nature of the projects upon which the beneficiary would work, however, has not been described. As such, whether the beneficiary's duties pertinent to those projects would be such that the AAO should find that the proffered position is correctly characterized as a Business/Project Analyst position is unclear. If the projects that the beneficiary would develop, implement, execute, update, monitor, plan, and schedule, and pertinent to which he would perform cost control duties, are the petitioner's remodeling projects, for instance, then the proffered position would be more akin to a construction manager position as described in the U.S. Department of Labor's *Occupational Outlook Handbook*. If his work would involve halting foreclosures, then it would likely constitute some other position. Absent a description of the projects referred to, the description of the duties of the proffered position is insufficient to demonstrate the nature of the proffered position.

Notwithstanding that the RFE issued in this matter requested a more detailed description of the duties of the proffered position, the duties as described are insufficient to demonstrate what the actual duties of the proffered position would be, or that the proffered position is correctly described

as a Business/Project Analyst position, rather than as a construction manager position, or a position with some other job title. Thus, the record, as constituted, precludes a determination that the duties of the proffered position are those of a "Business/Project Analyst." Based on the lack of documentary evidence, the AAO has determined that the petitioner has failed to distinguish the proffered position from a position that does not qualify as a specialty occupation. Thus, there is no basis upon which it can be determined that the petitioner has demonstrated a need for a Business/Project Analyst and that the beneficiary will be performing the claimed duties of a Business/Project Analyst on a full-time basis. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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." Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Furthermore, there must be sufficient, corroborating evidence in the record that demonstrates not only actual, non-speculative employment for the beneficiary, but also enough details and specificity to establish that the work the beneficiary will perform for the petitioner will more likely than not be in a specialty occupation. Without a meaningful job description within the context of non-speculative employment, the petitioner may not establish any of the alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

USCIS regulations affirmatively 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) and 103.2(b)(12). 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 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.

As the petitioner has failed to present sufficient, credible evidence of the actual job duties the beneficiary will perform, it has therefore failed to demonstrate that the occupation more likely than not requires a bachelor's or higher degree in a specific specialty or its equivalent as a minimum for entry. *See* INA § 214(i)(1). The petitioner also has not shown through submission of documentary evidence, that it meets any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Rather, while the petitioner claims that it requires a Business/Project Analyst and that it requires a "Bachelor's degree in Business Administration and Management or a closely[-]related major," it has not credibly shown that it requires a Business/Project Analyst and that the work requires such a bachelor's or higher degree in a specific specialty or its equivalent. Thus, the petitioner has not met its burden of proof in this regard,

and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

Another basis for the decision of denial is the related issue of whether a reasonable and credible offer of employment exists in this case. As noted above, the petitioner failed to adequately describe the duties the beneficiary would perform in the proffered position and the nature of its business, and therefore, it has not demonstrated that the offer of a Business/Project Analyst position, classified on the LCA is a Management Analyst position. It is also unclear from a review of the record that the petitioner is an active business that is currently conducting business as a real estate, remodeling, and property management firm as claimed on the Form I-129. Furthermore, it cannot be determined from a review of the record that the petitioner has the finances necessary to pay the required wage to the beneficiary and to employ him full-time in the proffered position in accordance with the terms and conditions of the petition as attested by the petitioner. As noted by the director, the petitioner failed to submit the requested tax returns, quarterly wage reports, and current business licenses. By not submitting such requested evidence, the petitioner precluded the director from establishing whether the petitioner has made a *bona fide* offer of employment to the beneficiary. Furthermore, there are no contracts or other evidence in the record demonstrating that the petitioner had projects for the petitioner to work on during the requested validity period.

Based on the evidence presented as well as the lack of evidence of specific, non-speculative projects that the beneficiary will be working on, the AAO finds that the record is not persuasive in establishing that the beneficiary will be employed as a Business/Project Analyst at the offered wage of \$47,300 for the validity period requested. To prove its job offer is *bona fide*, the petitioner must demonstrate that it is capable of employing the beneficiary in the position claimed and of paying the proffered wage to the beneficiary of the petition at the time of the petition is filed. The AAO cannot find, absent evidence demonstrating the petitioner's realistic ability to comply with the law and pay at least the prevailing wage to the instant beneficiary, that the petitioner has made a *bona fide* offer of employment to the beneficiary. The appeal will be dismissed and the visa petition denied on this additional basis.

The remaining issue upon which the director based the decision of denial is whether the beneficiary is entitled to a seventh year extension of his H-1B status.

In the RFE issued in this matter, the service center requested, *inter alia*, the following:

A copy of the Form I-797, Notice of Action, to show that 365 days or more have passed since an employment[-]based immigrant petition was filed on behalf of or by the H-1B nonimmigrant beneficiary.

Counsel did not then provide that document. Instead, as noted above, counsel provided an I-797 pertaining to the approval of a Form I-140 immigrant visa petition filed by [REDACTED], not the petitioner, for [REDACTED] who is not the beneficiary. The document requested was relevant to the material issue of whether the beneficiary is eligible for an extension of his H-1B pursuant to AC21, as amended, and was not timely provided.

Subsequently, on appeal of the decision denying the visa petition for, *inter alia*, failing to show that the beneficiary was eligible for such an extension, counsel provided an additional I-797. This other I-797 pertains to the approval of another Form I-140 immigrant visa petition filed by [REDACTED] for [REDACTED] whose name differs from the beneficiary in the instant matter.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The evidence in the record as constituted when the director issued her decision did not include the requested Form I-797. As such, the evidence it contained was insufficient to demonstrate that the beneficiary was qualified for an extension of his H-1B visa status beyond the usual six-year limit. The appeal will be dismissed and the visa petition denied for this additional reason.

Beyond the decision of the director, the petition must also be denied due to the petitioner's failure to submit requested evidence that precludes a material line of inquiry. Specifically, in the RFE, the service center requested the petitioner's 2007, 2008, and 2009 tax returns, its last eight quarterly wage reports, its current business license, and its lease. Furthermore, the lease that it submitted does not pertain to the claimed work location of the beneficiary. Specifically, the petitioner claims on the Form I-129 and LCA that the beneficiary will work at its address, e.g., [REDACTED] OH; however, the submitted lease is for a property located at [REDACTED] OH.

The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. *See* 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1), (8), and (12). Those requested documents, which are all relevant to the material issues of whether the petitioner operated the business described in the visa petition and whether the job offer in this case is *bona fide*, were not provided. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The appeal will be dismissed, and the visa petition will be denied, for this additional reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its

equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further except to note that the submitted evaluation relies on the beneficiary's education and employment experience to show that a beneficiary has the equivalent of a bachelor's degree; therefore, that evaluation must be accompanied by evidence that the evaluator has authority to grant college-level credit for employment experience in the particular specialty at an accredited college or university which has a program for granting such credit based on an individual's work experience. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D), and, more specifically, 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). This evaluation, however, is not accompanied by evidence that the evaluator has any such authority at any such university. It is not, therefore, competent evidence that the beneficiary has the equivalent of a bachelor's degree.

Further, as was explained above, an otherwise undifferentiated degree in business administration is not a degree in a specific specialty. Therefore, even if the evaluation were taken at face value, it would not show that the beneficiary has a minimum of a bachelor's degree or the equivalent in a specific specialty, and does not show that he is qualified to perform any specialty occupation work.

The appeal will be dismissed and the visa petition will be denied on each of the bases described above, with each considered as an independent and alternative basis for the decision. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

ORDER: The appeal is dismissed. The petition is denied.