

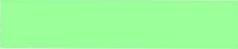


U.S. Citizenship
and Immigration
Services

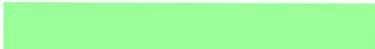
(b)(6)



Date: **OCT 02 2013** Office: VERMONT SERVICE CENTER

FILE: 

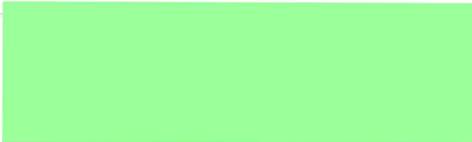
IN RE:

Petitioner: 

Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner describes itself as an "[i]nformation technology consulting, training and applications development" business. The petitioner indicates it was established in 2002, employs 16 personnel in the United States, and reported \$2,400,000 in gross annual income in 2010. In order to employ the beneficiary in what it designates as an information technology security analyst 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 denied the petition, determining that the Labor Condition Application (LCA) submitted with the petition was materially incorrect and thus did not support the petition. On appeal, counsel asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's statement in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO concurs with the director's decision. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

Later in this decision, the AAO will also address two additional, independent grounds for denial of the petition that the AAO finds also preclude approval of this petition. Specifically, beyond the decision of the director, the AAO finds that the petitioner: (1) failed to establish that the LCA is valid for the duration of requested period of employment set out in the petition; and, (2) failed to establish that the proffered position is a specialty occupation. Thus, for these reasons as well, the appeal will be dismissed and the petition will be denied, with each considered as an independent and alternative basis for denial.¹

The Labor Condition Application

The first issue before the AAO is whether the submitted, certified LCA supports the petition.

Facts and Procedural History

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In this matter, the petitioner stated on the Form I-129 and initial supporting documentation that it seeks the beneficiary's services as an information technology security analyst from October 1, 2012 until September 30, 2015. The petitioner reported on the H-1B Data Collection and Filing Fee Exemption Supplement to the Form I-129 petition that it is an H-1B dependent employer. The petitioner submitted an LCA certified on April 13, 2012 and signed by the petitioner on April 16, 2012 in support of the instant petition. The petitioner indicated on the LCA that the occupational classification for the position is "Network and Computer Systems Administrators" SOC (ONET/OES) code 15-1142 at a Level I (entry-level) wage. At Part I.a.1 of the certified LCA, the petitioner stated that it is not H-1B dependent. The AAO notes that by completing and submitting the LCA, and by signing the LCA, the petitioner attested that the information contained in the LCA was true and accurate.

The director found the initial evidence insufficient to establish eligibility for the benefit sought and issued an RFE on July 23, 2012. The director advised the petitioner of the discrepancy between the LCA and the petition regarding its status as an H-1B employer. The director also noted that United States Citizenship and Immigration Services (USCIS) records showed that the petitioner had filed 27 Form I-129, H-1B petitions in the previous 12 months although it only claimed to employ 16 personnel. The director further advised the petitioner that the current submitted LCA is not valid and requested that the petitioner provide a new LCA with the correct information regarding its H-1B dependency status which had been certified prior to filing the Form I-129 petition.

In response, the petitioner through counsel, noted that it had always conceded that it is an "H-1B dependent" employer and that a clerical mistake had been made on the LCA in Part I.a.1 of the LCA form. The petitioner provided copies of 12 LCAs submitted in the 2012 year and pointed out that each of the 12 LCAs listed the petitioner's status as an "H-1B dependent" employer.

Upon review of the evidence submitted, the director found that the LCA submitted with the petition is materially incorrect and does not correspond with the instant petition.

On appeal, counsel for the petitioner asserts that the Department of Labor (DOL), not USCIS, has jurisdiction to investigate all aspects of an employer's LCA compliance, including compliance with the H-1B dependency requirements. Counsel contends that USCIS's authority regarding the LCA is limited to the validity period of the LCA and the location.

Analysis

Upon review of the pertinent statutes and regulations we find that an LCA submitted in support of the petition that identifies the petitioner as not an "H-1B dependent" employer is not in accord with the submitted petition that identifies the petitioner as an "H-1B dependent" employer. It therefore, must be concluded that the LCA does not correspond to the petition. The Act itself states that an LCA must be certified by DOL "to" the Secretary of Homeland Security. The Act further requires that the LCA must be certified to the Secretary "with respect to" that "alien" in order for him or her to qualify for H-1B classification. See section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), which provides in part:

[An alien] . . . 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)

To certify an LCA to DHS, both DOL and DHS regulations currently only provide for a process by which a petitioner first files and obtains a certified LCA from DOL and then files the certified LCA in support of a Form I-129 with USCIS. *See*, in pertinent part, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B); 20 C.F.R. § 655.705(b), which states:

Petitioner requirements. The petitioner shall submit the following with an H-1B petition involving a specialty occupation: (1) A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary

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

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

[Italics added]. The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a certified LCA that correctly states that the petitioner is an H-1B dependent employer, and the petition must be denied for this reason.

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), which states:

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

USCIS may request additional evidence from the petitioner by issuing an RFE. The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. Title 8 C.F.R. § 103.2(b)(12) states:

(b)(6)

Effect where evidence submitted in response to a request does not establish eligibility at the time of filing. [A] benefit request shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the benefit request was filed. [A] benefit request shall be denied where any benefit request upon which it was based was filed subsequently.

The director advised the petitioner in this matter that a new LCA with the correct information must be submitted to support the instant petition. The director also notified the petitioner that the LCA must have been certified prior to the filing date of the petition. The petitioner failed to provide this evidence.

Counsel's assertion on appeal that USCIS is without jurisdiction to investigate the aspects of an employer's LCA compliance is misguided. To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, information regarding the employer, et cetera. If a petitioner submits an LCA that does not correspond to the petition, a corrected, certified LCA must be submitted that corresponds to the petition. If a correct LCA, certified prior to filing the petition is unavailable, an amended or new petition with the new supporting, corresponding LCA must be filed. To allow a petition to be amended in any other way would be contrary to the regulations. Taken to the extreme, a petitioner could then simply claim it is H-1B dependent in certain circumstances and claim it is not H-1B dependent in others after the fact, either before or after the H-1B petition has been adjudicated.

In view of the foregoing, the petitioner has not overcome the director's basis for denying the petition. For this reason, the petition may not be approved. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground. The AAO shall also deny the petition on the additional grounds set out below.

Beyond the decision of the director, also regarding the LCA, the petitioner failed to establish that the submitted LCA is valid for the duration of requested period of employment set out in the petition.

In this matter, the petitioner specified the intended employment duration as October 1, 2012 to September 30, 2015 on the Form I-129. The petitioner provided an LCA certified for these same dates. However, the petitioner provided only one agreement, between the petitioner and [REDACTED] that identified the beneficiary as the prospective consultant. The agreement indicated that the beneficiary will be placed off-site at a third party end-client's location with the end date of employment at the site as December 31, 2012. In response to the director's RFE, the petitioner provided an August 7, 2012 letter signed by a [REDACTED] representative indicating that the beneficiary in this matter is now assigned to its client, [REDACTED] until June 30, 2013, and that it anticipated its consulting needs with the petitioner and the beneficiary to extend beyond that date. Although [REDACTED] noted the possibility of extensions of the beneficiary's work for [REDACTED] beyond June 30, 2013, such possibility is speculative and

the petitioner has not provided evidence that the contract or project will be extended. 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 petitioner has not established it has employment and where that employment exists, let alone specialty occupation employment, for the beneficiary for the time period subsequent to June 30, 2013.² In this matter, the record does not include the required evidence.

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) states, in pertinent part:

Service or training in more than one location. A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.

The itinerary language at 8 C.F.R. § 214.2(h)(2)(i)(B), with its use of the mandatory "must" and its inclusion in the subsection "Filing of petitions," establishes that the itinerary as there defined is a material and necessary document for an H-1B petition involving employment at multiple locations, and that such a petition may not be approved for any employment period for which there is not submitted at least the employment dates and locations. Here, given the lack of information regarding the beneficiary's employment subsequent to June 30, 2013, and that the petitioner's requested period of employment for the petitioner extends to September 30, 2015, the petitioner has failed to meet the itinerary requirement at 8 C.F.R. § 214.2(h)(2)(i)(B). The petitioner has not provided documentary evidence that it has employment for the beneficiary for the requested duration of employment, i.e., October 1, 2012 to September 30, 2015.

Specialty Occupation

Also beyond the decision of the director, the petitioner has not provided sufficient evidence to demonstrate the proffered position is a specialty occupation.

The Law

To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

² The petitioner has not provided an itinerary listing duties to be performed by the beneficiary for the duration of the petition and the location(s) the beneficiary will work. The petitioner has not provided evidence of an underlying agreement, work order, or other evidence demonstrating that the petitioner has specialty occupation work available for the beneficiary throughout the duration of the requested employment period.

occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise

interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as 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.

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

Facts and Procedural History

The petitioner indicated on the Form I-129 petition that it wished to employ the beneficiary as an

information technology security analyst from October 1, 2012, until September 30, 2015, at an annual salary of \$60,000. The LCA certified on April 13, 2012, listed the validity period of the LCA as October 1, 2012 to September 30, 2015, for a Level I (entry-level), "network and computer systems administrators," SOC (ONET/OES) code 15-1142, for work located in [REDACTED] New York.

In the April 11, 2012 letter submitted in support of the petition, the petitioner stated that it "cater[s] to the IT needs of financial and pharmaceutical companies across the nation" and it specialized "in analyzing companies' needs and providing them with cost effective solutions to meet their growing IT needs." The petitioner indicated further that it "provides its clients with the resources that they need for the short term or the long term and for both mission critical and day-to-day operational objectives." The petitioner also noted:

[It] provides on-site consulting talent to define business requirements and application roadmaps. [It] also offer[s] on-site/off-site teams for applications development, testing, implementation, production support and maintenance. [The petitioner's] clients can utilize multiple applications, technologies, databases and tools to achieve price-performance ratios well within their budgets.

The petitioner indicated that the beneficiary will be located at the end-user customer, [REDACTED] through its primary vendor, [REDACTED]. The petitioner stated the beneficiary's duties as an information technology security analyst will include:

- (1) Identify and establish information security solutions and tools.
- (2) Clarify and communicate information security policies and standards.
- (3) Perform information security reviews and assessments.
- (4) Ensure delivery of secure products into the business unit performing application security reviews.
- (5) Address proper technology risk considerations at each phase of the system development life cycle.
- (6) Provide proactive solutions to correct exposure or mitigate risk.

The petitioner noted that to perform these duties it required a "computer professional with at least a bachelor's degree in a computer-related field."

The petitioner's employment contract with the beneficiary identified the beneficiary's duties as:

Network and System Implementation and Interfacing, Protocol-level analysis of different networking protocols such as TCP, IP, HTTP, SSL/TLS, SSH, DNS, SNMP, SMTP, FTP, IPSEC with AH and ESP, and deployment and maintenance of IT and Web Security Infrastructure, including administration of appropriate access protection; system integrity; audit control; system recovery methods and procedures; prevention of breaches and intrusions; awareness training; and compliance with IT security policy directives.

In the agreement between the petitioner and [REDACTED] the responsibilities of the position

proffered to the beneficiary included the following:

- Responsible for ensuring the compliance to the client's policies and standards. This is accomplished by identifying and establishing information security solutions and tools; clarification and communication of IS policies and standards; involvement in enterprise IS projects; performing information security reviews and assessments.
- Responsible to ensure delivery of secure products into the business unit performing application security reviews. Ensure that proper technology risk considerations are addressed at each phase of the system development life cycle and provide proactive solutions to correct exposures or mitigate risk.

The agreement listed the start date of the beneficiary's work as April 16, 2012 and the end date as December 31, 2012. The agreement listed [REDACTED]'s requirement of a bachelor's degree in computer science, engineering or related analytical or scientific discipline or an equivalent as a requirement to perform the duties described.

In response to the director's RFE, the petitioner provided an August 7, 2012 letter signed by a [REDACTED] representative indicating that the beneficiary in this matter is assigned to its client, [REDACTED] until June 30, 2013, and that it anticipated its consulting needs with the petitioner and the beneficiary to extend beyond that date. [REDACTED] repeated the petitioner's initial description of the beneficiary's duties as the duties the beneficiary would perform for [REDACTED]

The record also includes an "Employee Performance Form" on the petitioner's letterhead dated May 2, 2012, signed by both the beneficiary and the petitioner's supervisor/manager. The Employee Performance Form lists the client's name as [REDACTED] and identifies the beneficiary's project work and the percentage of time spent on each element of his work as follows:

1. Identify and establish information security solutions and tools – 10 percent.
2. Perform information security reviews and assessments – 40 percent.
3. Address proper technology risk considerations at each phase of the system development life cycle – 25 percent.
4. Clarify and communicate information security polices and standards – 15 percent.
5. Provide proactive solutions to correct exposure or mitigate risk – 10 percent.

The record does not include [REDACTED]'s (the ultimate end user of the beneficiary's services) description of the actual duties to be performed by the beneficiary and its requirements for the position.

Analysis

Although the director did not address this issue in his decision, we find that the petitioner has failed to provide sufficient evidence to establish that the services to be performed by the beneficiary are those of a specialty occupation.

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

Here, the record of proceeding is devoid of sufficient information from the end-client, [REDACTED] regarding the specific job duties to be performed by the beneficiary for that company and its requirements for the proffered position. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary, therefore, precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.³

³ Additionally, we observe that, even if the proffered position were established as being that of a network and computer systems administrator, (the occupational classification certified on the submitted LCA), a review of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* does not indicate that, simply by virtue of its occupational classification, such a position qualifies as a specialty occupation. More specifically, the information on the educational requirements in the "Network and Computer Systems Administrator" chapter of the 2012-2013 edition of the *Handbook* indicates at most that a bachelor's degree in fields related to computer or information science is most common. The *Handbook* also reports that "because administrators work with computer hardware and equipment, a degree in computer engineering or electrical engineering usually is acceptable as well." The *Handbook* also recognizes that some positions may only require an associate's degree or a postsecondary certificate in a computer field with related work performance to perform the duties of this occupation. Thus, the variety of paths, other than a bachelor's degree in a specific discipline, available to secure work in this occupation precludes a determination that a bachelor's degree in a specific discipline is a standard occupational, entry requirement. *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Network and Computer Systems Administrators," <http://www.bls.gov/ooh/computer-and-information-technology/network-and-computer-systems-administrators.htm> (last visited Sept. 30, 2013).

Moreover, the petitioner's own acceptance of a general bachelor's degree in an undefined computer-related field is tantamount to an admission that the proffered position is not in fact a specialty occupation. As such, even if the substantive nature of the work had been established, the instant petition could not be approved for this additional reason.

Moreover, even if the beneficiary will perform the duties described by the petitioner for the end-client in this matter, we observe that the petitioner's description of duties is general and overly broad. The description does not convey what the beneficiary will do on a daily basis. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. The petitioner's description of "duties" as set out in its employment agreement with the beneficiary, in essence, describes particular skills required of the beneficiary. These skills do not detail what duties the beneficiary will be required to perform. We observe, as well, that [REDACTED] has adopted the petitioner's general statement of duties and does not further detail the actual duties which the beneficiary will be required to perform. As the record does not provide a substantive description of the duties the beneficiary will perform, the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, it cannot be found that the proffered position qualifies as a specialty occupation. For this additional reason, the petition may not be approved.

Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.⁴

ORDER: The appeal is dismissed.

⁴ The AAO observes that a review of USCIS records indicates that on July 1, 2013, a date subsequent to the director's denial of the instant petition, another employer filed a Form I-129 petition seeking nonimmigrant H-1B classification on behalf of the beneficiary. USCIS records further indicate that this other employer's petition was approved on July 10, 2013. The AAO notes that as the beneficiary has been approved for H-1B classification with another employer, it appears the issues in this proceeding are now moot. However, on August 15, 2013, the AAO sent a letter to the petitioner through counsel requesting verification that it intended to pursue the instant appeal. On August 29, 2013, counsel responded that the petitioner did want to pursue the appeal. Accordingly, the AAO reviewed the matter *de novo* and issued this full decision.