



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-S-T- CORP.

DATE: FEB. 10, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an “Information Technology Company,” seeks to temporarily employ the Beneficiary as a “Programmer Analyst” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, California Service Center, revoked the approval of the petition. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. ISSUE

The issue before us is whether the Director properly revoked the approval of the petition.¹

II. REVOCATION FRAMEWORK

USCIS may revoke the approval of an H-1B petition 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 or on the application for a temporary labor certification 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

¹ We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

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- (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.

Upon review of the record, we determine that the Director properly revoked the approval of the petition pursuant to 8 C.F.R. §§ 214.2(h)(11)(iii)(A)(1) (the Beneficiary is no longer employed by the Petitioner in the capacity specified in the petition), (2) (the statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact), and (3) (the Petitioner violated terms and conditions of the approved petition).

III. FACTUAL AND PROCEDURAL HISTORY

On the Form I-129, the Petitioner stated that it is a 165-employee “Information Technology Company” located at [REDACTED] Illinois. The Petitioner sought to extend the Beneficiary’s employment in a full-time “Programmer Analyst” position from the period of October 11, 2013 to May 7, 2016. The Petitioner stated that the Beneficiary would work off-site at the address of [REDACTED] Illinois.

The labor condition application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title “15-1121, Computer Systems Analysts,” from the Occupational Information Network (O*NET) at a Level I (entry) wage level. The LCA listed three places of employment: (1) [REDACTED] Illinois; (2) [REDACTED] Illinois; and (3) [REDACTED] Illinois.

The Petitioner submitted a letter, dated April 25, 2013, listing the duties of the proffered position as follows:

1. Analyzing user requirements and defining functional specifications
2. Creating an Oracle database and application upgrade plan
3. Analyzing, modifying and implementing an upgrade to Oracle RDBMS while applying all relevant patches
4. Migrating Oracle applications and RDBMS in various environments
5. Developing shell scripts to establish several proactive monitoring reports
6. Developing and implementing test validations of the database and application
7. Analyzing test results and recommending modifications to the databases and applications to meet project specifications
8. Performing test disaster recovery
9. Documenting modifications on enhancements made to the databases and applications as required by the project

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The instant petition was initially approved by the Director on October 12, 2013.

On March 4, 2015, the Director issued a notice of intent to revoke (NOIR) the approval of the petition. In the NOIR, the Director informed the Petitioner of derogatory results from an administrative site visit performed on February 26, 2014. More specifically, the site inspector went to [REDACTED] Illinois, which was the end-client address listed on the petition where the Beneficiary would work, and found that the Beneficiary was not assigned to work at that location. The site inspector contacted the Beneficiary, who stated that he had worked for the end-client, the [REDACTED] Illinois, from September 17, 2012 until the end of October 2013. The Beneficiary stated that he was no longer working for [REDACTED] and that he had been assigned to a new end-client, the [REDACTED] located at [REDACTED] California. The site inspector also contacted the Petitioner, who stated that the Beneficiary was currently working at [REDACTED] on Mondays through Thursdays, and at the Petitioner's worksite on Fridays. In the NOIR, the Director advised the Petitioner that it intended to revoke the approval of the petition based upon this information, the lack of evidence from the new end-client regarding the Beneficiary's services, and the lack of a valid LCA covering the Beneficiary's assignment to the new end-client.

In a letter dated April 2, 2015, submitted in response to the NOIR, the Petitioner explained:

The Beneficiary was initially assigned to the [REDACTED] located at [REDACTED] Illinois. The Beneficiary was then reassigned to the Petitioner's office located at [REDACTED] Illinois to perform duties on the Petitioner's project for the [REDACTED]. Although the [REDACTED] office is located in [REDACTED], the Beneficiary worked remotely on this project from the Petitioner's office in [REDACTED] Illinois and this information was provided to the USCIS Fraud Detection and National Security ("FDNS") officer. The Beneficiary is currently assigned to [REDACTED] located at [REDACTED] Illinois. Because all of the Beneficiary's work locations were/are located in the [REDACTED] a new LCA was not required to be filed with the DOL and thus an Amended H-1B Petition was not required to be filed with the USCIS.

The Director revoked the approval of the petition on June 10, 2015. The Petitioner subsequently filed the instant appeal.

On appeal, the Petitioner reiterates its claim that the Beneficiary has been assigned to [REDACTED] and that because the [REDACTED] work location is located in an MSA included in the LCA, the Petitioner was not required to file a new LCA and amended petition. In support of the appeal, the Petitioner submits, *inter alia*, a letter from [REDACTED] confirming the Beneficiary's assignment to [REDACTED] and listing his job duties, as follows:

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1. Respond to issues (incidents) created related to IAM & GRC environments
2. Perform scheduled maintenance of the servers
3. Startup/shutdown procedures for the servers
4. Conduct comprehensive monitoring
5. Apply application server patches as needed
6. Provide performance tuning and capacity planning recommendations
7. Institute procedures for handling emergencies and resolving the problems
8. Maintaining and patching of specified non-production environments
9. Coordination of backup processes with [REDACTED] IT staff
10. Assist with creation and tracking of Oracle SRs
11. Scheduling of planned maintenance windows with [REDACTED], staff
12. Institute quality assurance/quality control procedures
13. Document support procedures and create IAM environment documents
14. Conduct knowledge transfer sessions with [REDACTED] staff
15. Review/Update tickets in Service-Now ([REDACTED] Incident Tracking System)

The Petitioner also submits on appeal: a Statement of Work (SOW) between [REDACTED] and the Petitioner, dated February 12, 2015, entitled “[REDACTED] – Oracle Access Control Framework Documentation”; another SOW between [REDACTED] and the Petitioner, dated December 11, 2014, entitled “[REDACTED] – Oracle WebCenter System Functional/Technical Tasks”; and a Consulting Agreement between [REDACTED] and the Petitioner, dated December 12, 2014.

IV. ANALYSIS

We find that the Petitioner has not overcome the grounds of revocation specified by the Director.

A. The Beneficiary is No Longer Employed in the Capacity Specified in the Petition

In the Form I-129 petition and supporting documentation, including the LCA, the Petitioner indicated that the Beneficiary would be working at the following three locations: (1) the Petitioner’s worksite; (2) [REDACTED] Illinois, later identified as the client worksite of [REDACTED] and (3) [REDACTED] Illinois, for an unidentified end-client. The Petitioner further indicated that it would employ the Beneficiary on a full-time basis from October 11, 2013, to May 7, 2016, pursuant to the terms and conditions stated in the petition.

However, the evidence of record reflects that the Beneficiary’s assignment at [REDACTED] terminated in October 2013, and that he was subsequently assigned to another end-client, [REDACTED], located at [REDACTED] California. The Petitioner did not list [REDACTED] or the [REDACTED] address as one of the Beneficiary’s places of employment during the time period of October 11, 2013 to May 7, 2016.

Although the Petitioner asserted that the Beneficiary worked remotely for [REDACTED] from the Petitioner’s premises, the Beneficiary indicated otherwise, stating that he worked for [REDACTED] located at [REDACTED] California. The Petitioner has not resolved this apparent

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inconsistency with competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-2 (BIA 1988) (it is incumbent upon the petitioner to resolve inconsistencies by independent objective evidence, and any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies). That is, the Petitioner has not submitted any objective documentary evidence establishing the Beneficiary's actual work location while assigned to [REDACTED]. "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *In re Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Moreover, the Petitioner has not submitted any objective documentary evidence establishing the Beneficiary's actual job duties, wage, and other employment terms and conditions while assigned to [REDACTED]. Again, "going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *In re Soffici*, 22 I&N Dec. at 165. Without evidence of the Beneficiary's actual work location, job duties, and other terms and conditions of employment for [REDACTED], the Petitioner has not established that the Beneficiary was employed in the same capacity specified in the petition.

In addition, the Petitioner has not established that the Beneficiary's current assignment to another end-client, [REDACTED], is in the same employment capacity specified in the petition. The Beneficiary's job duties as listed in [REDACTED] letter, dated May 27, 2015, are so broadly worded that they do not adequately convey the specific tasks to be performed by the Beneficiary. For example, there is no additional explanation of what specific tasks are involved in the duty of "[responding] to issues (incidents) created related to IAM & GRC environments," what these "IAM & GRC environments" are, and the nature of the project(s) to which the Beneficiary has been assigned. To the extent that his job duties are described in [REDACTED] letter, they appear to be different from the duties listed in the Petitioner's April 25, 2013, letter. For instance, the [REDACTED] letter listed several duties related to servers, such as "[performing] scheduled maintenance of the servers" and "[s]tartup/shutdown procedures for the servers," that are not listed in the Petitioner's letter.

Moreover, the [REDACTED] letter does not state the length of the Beneficiary's assignment there. The [REDACTED] letter also does not explain in detail other relevant employment conditions and terms, such as his pay rate and the manner and extent of the Petitioner's control over the Beneficiary's work.² As such, the Petitioner has not submitted sufficient, reliable evidence establishing that the Beneficiary's employment capacity has not, and will not be, changed.³

² While [REDACTED] letter stated in conclusory terms that the Petitioner would direct, review, and supervise the Beneficiary's work, it did not further explain these statements in factual detail. Without more, these are conclusory statements that are entitled to little probative weight.

³ With respect to the two SOWs submitted between [REDACTED] and the Petitioner, we find the Petitioner has not established the relevance of these documents to the Beneficiary. Neither document specifically lists the Beneficiary or a "Programmer Analyst" position as one of the required resources. In fact, the SOW dated December 11, 2014, specifically lists the resources provided by the Petitioner as [REDACTED] (Solution Architect), [REDACTED] (Technical Manager/Sr. Consultant Middleware), [REDACTED] (Sr. Consultant – Oracle SOA Suite), and [REDACTED] (Sr. Consultant – Oracle

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For all of the above reasons, the evidence of record is insufficient to establish that the Petitioner has employed and will continue to employ the Beneficiary in the same capacity specified in the petition for the entire validity period from October 11, 2013 to May 7, 2016. The Director therefore properly revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(1).

B. The Statement of Facts was Not True and Correct, Inaccurate, and Fraudulent

As the Petitioner assigned the Beneficiary to end-clients, end-client locations, and job duties that were not previously disclosed in the initial petition and LCA, we find that the statement of facts contained in the petition was untrue and incorrect, inaccurate, or fraudulent. The Director therefore also properly revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(2).

C. The Petitioner Violated the Terms and Conditions of the Approved Petition

We find that the Petitioner violated the terms and conditions of the approved petition, as the evidence of record is insufficient to establish that: (1) the Petitioner has maintained an employer-employee relationship with the Beneficiary; (2) the proffered position continues to qualify as a specialty occupation; and (3) the LCA submitted to support the petition remains valid.

As detailed above, the Petitioner did not submit sufficient, reliable evidence establishing the Beneficiary's job duties and other terms and conditions of employment for [REDACTED] and [REDACTED]. The record of proceeding thus lacks sufficient documentation evidencing what exactly the Beneficiary would do for the period of time requested or where exactly and for whom the Beneficiary would be providing services.

Given this specific lack of evidence, the Petitioner has not established who has or will have actual control over the Beneficiary's work or duties, or the condition and scope of the Beneficiary's services. In other words, the Petitioner has not established whether it has made a *bona fide* offer of employment to the Beneficiary based on the evidence of record or that the Petitioner, or any other company which it may represent, will have and maintain an employer-employee relationship with the Beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the Petitioner to engage the Beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker).

This specific lack of evidence also precludes a finding that the proffered position is a specialty occupation. Again, the record of proceeding does not contain sufficient, reliable documentation from the end-clients, [REDACTED] and [REDACTED], regarding the specific job duties to be performed by the

WebCenter Suite). The February 12, 2015, SOW lists the three consultants provided by the Petitioner as an IDM Architect, a Sr. IDM Consultant, and a Technical Writer, all of whom would perform different duties than those listed for the Beneficiary in [REDACTED] letter dated May 28, 2015. We also note that both SOWs were for short-term projects: one which was to be "completed between 5-6 Weeks of schedule," and the other "expected to complete within three months."

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Beneficiary for those companies. Without such documentation, the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, which 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 entry into 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. *See Defensor v. Meissner*, 201 F.3d 384, 387-8 (5th Cir. 2000) (it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s)).

As the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies for classification as a specialty occupation.

Furthermore, we find that the Petitioner has not submitted a valid LCA to support the petition. The LCA submitted with the petition did not include the Beneficiary's subsequent assignments to [REDACTED], and thus, is not valid.

The Petitioner asserts that it was not required to submit a new LCA and an amended petition because the Beneficiary's work for [REDACTED] was performed within the same MSAs covered by the initial LCA. However, the Petitioner's assertions are not persuasive. First, as we previously discussed, the Petitioner has not submitted sufficient evidence to corroborate its assertion that the Beneficiary's work for [REDACTED] was performed remotely from the Petitioner's office.

Second, the Petitioner is required to submit a new LCA and an amended petition whenever there are "any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition." 8 C.F.R. § 214.2(h)(2)(i)(E). The term "material changes in the terms and conditions of employment" encompasses not only the geographic location of the Beneficiary's changed employment, but also to any other salient aspects of the terms and conditions of his employment, such as his job duties, proffered wage, and factors relevant to determining the Petitioner's control over the Beneficiary. Thus, even *if* the Petitioner had established that the Beneficiary's subsequent assignments were all within the same MSAs, the other material changes to his employment still necessitated the filing of a new LCA and amended petition. As such, and without more, we cannot find that the submitted LCA is valid and supports the petition.⁴

⁴ While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (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. The regulations state, in pertinent part:

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For all of the above reasons, we find that the Petitioner violated the terms and conditions of the approved petition. The Director properly revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(3).

D. The Approval of the Petition Violated Paragraph (h) of this Section or Involved Gross Error

Finally, although not specifically addressed by the Director, we also find that the approval of the petition violated paragraph (h) of this section or involved gross error pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5). Thus, it would have been within the Director's discretion to initiate revocation-on-notice proceedings on this basis.

In the LCA, the Petitioner indicated that the Beneficiary would work at three locations: (1) the Petitioner's worksite; (2) [REDACTED] Illinois, which is the client worksite of [REDACTED]; and (3) [REDACTED] Illinois, belonging to an unidentified end-client.

However, the record of proceeding does not contain sufficient, reliable evidence (such as copies of actual work contracts, statements of work, and other contractual agreements between the Petitioner and these end-clients) establishing the terms and conditions of the Beneficiary's assignments at all three locations. The record of proceeding does not contain any documentation from [REDACTED] and the unidentified end-client at [REDACTED] regarding the Beneficiary's assignments there. The Petitioner's April 25, 2013, letter made no specific mention of the Beneficiary's assignments to [REDACTED] and the unidentified end-client, either.

Even if the job duties listed in the Petitioner's April 25, 2013, letter represented the Beneficiary's job duties at [REDACTED] and the unidentified end-client, these job duties were so broadly worded that they did not adequately convey the specific tasks to be performed by the Beneficiary. For example, the Petitioner stated that the Beneficiary would be "[a]nalyzing test results and recommending modifications to the databases and applications to meet project specifications" and "[d]ocumenting modifications on enhancements made to the databases and applications as required by the project." However, the Petitioner did not further identify and document what specific project(s) the Beneficiary would be assigned for to [REDACTED] and the other end-client, the particular tasks he would perform for each project, and the body of knowledge required to perform these duties. Moreover, this letter did not explain other salient aspects of the Beneficiary's employment, such as how the

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 for H-1B visa classification.*

20 C.F.R. § 655.705(b) (emphasis added).

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Petitioner directed, supervised, and otherwise maintained control over the Beneficiary's work performed off-site at different end-client worksites.

Accordingly, without sufficient evidence establishing the terms and conditions of the Beneficiary's assignments at all end-clients, we cannot find that the Petitioner had established that, as of the time of filing, it had an employer-employee relationship with the Beneficiary and that the proffered position qualified as a specialty occupation. The approval of the petition based upon the limited evidence contained in the record of proceeding thus violated paragraph (h) of this section or involved gross error pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5).

V. CONCLUSION

The Director properly revoked the approval of the petition. The petition will remain revoked and the appeal will be dismissed for the above stated reasons.⁵

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) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

ORDER: The appeal is dismissed.

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⁵ We may deny an application or petition that does not comply with the technical requirements of the law even if the Director does not identify all of the grounds for denial in the initial decision. See *Spencer Enters., Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001); see also *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015) (noting that we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. See *Spencer Enters., Inc. v. United States*, 229 F. Supp. 2d at 1037; see also *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").