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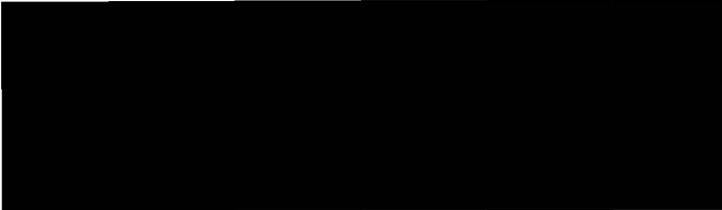
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FILE: WAC 06 267 53248 Office: CALIFORNIA SERVICE CENTER Date: JAN 30 2009

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, 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.

The petitioner is a corporation engaged in retail investments and sales that currently conducts business through three general retail stores. To continue to employ the beneficiary in a position that it has designated as a market research analyst, the petitioner endeavors to extend the classification of the beneficiary 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).

In denying the petition, the director determined that the evidence submitted by the petitioner in response to a request for examples of the beneficiary's work product from the validity period of the previously approved petition "is not convincing for the purpose of establishing that the beneficiary has maintained his [H-1B] status by performing the duties of a Market Research Analyst since November 21, 2003 [the beginning of the three-year employment period for which the previous H-1B petition was approved]."

On appeal, counsel contends that, contrary to the director's decision, the particular position in which the beneficiary has been serving since the approval of the preceding H-1B petition has always been a specialty occupation position within the meaning of section 101(a)(15)(H)(i)(b) of the Act because "it is a position that normally requires a minimum of a baccalaureate degree in a specified field of study; it is a common practice in the industry to require a bachelor's degree for the position; and the nature of the duties is so specialized and complex that knowledge required to perform [them] is usually associated with the attainment of a baccalaureate or higher degree."

As will be discussed below, the AAO finds that the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the director's decision to deny the petition shall not be disturbed. Counsel's assertions about the proffered position satisfying specialty-occupation criteria are noted; but they merit no weight, as they are not supported by documentary evidence in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO bases its decision upon its consideration of the entire record of proceeding before it, 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 matters submitted in response to the RFE; (4) the director's denial letter; (5) the Form I-290B and its attachments, including counsel's brief in support of the appeal and the unsigned memorandum from the California Service Center to the American Immigration Lawyers Association [AILA], dated October 27, 2004, which summarizes the August 2004 liaison meeting between the service center and AILA.

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.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a 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 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, 8 U.S.C. § 1184(i)(1), 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 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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. 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 professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

Before discussing the application of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this case, the AAO will address two preliminary issues, namely, the significance of the service center’s memorandum on the August 2004 liaison meeting with AILA; and the director’s statement that the 2006-2007 edition of the Department of Labor’s *Occupational Outlook Handbook (Handbook)* indicates that the Market Research Analyst occupational category qualifies as a specialty occupation.

In his brief on appeal, counsel cites the memorandum on the August 2004 service center/AILA liaison meeting as support for the propositions that it is “not up to the USCIS to make a determination as to the petitioner’s business necessity for a given position,” and that USCIS “should not question the needs of [a] petitioning organization” as long as the petitioner “demonstrates that the types of duties to be performed are normal and customary requirements in similar organizations in the petitioner’s industry.” The AAO notes first that the memorandum has no precedential value and, therefore, no binding effect upon the AAO. *See* 8 C.F.R. § 103.3(c) (types of decisions that are precedent decisions binding all USCIS officers). Courts have consistently supported this position. *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5<sup>th</sup> Cir. 2000) (holding that CIS memoranda merely articulate internal guidelines for INS personnel; they do not establish judicially enforceable rights).

An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely"); *see also Noel v. Chapman*, 508 F.2d 1023 (2nd Cir. 1975) (finding that policy memoranda to INS district directors regarding voluntary extended departure determinations to be "general statements of policy"); *Prokopenko v. Ashcroft*, 372 F.3d 941, 944 (8th Cir. 2004) (describing an INS Operating Policies and Procedures Memorandum (OPPM) as an "internal agency memorandum," "doubtful" of conferring substantive legal benefits upon aliens or binding the INS); *Romeiro de Silva v. Smith*, 773 F.2d 1021, 1025 (9th Cir. 1985) (describing an INS Operations Instruction (OI) as an "internal directive not having the force and effect of law").

Further, the petitioner's judgment on whether or not to hire a person for the job it designates as a market-research-analyst position is not a subject on appeal. Rather, the question before the AAO is whether the evidence of record establishes that the job qualifies as a specialty occupation in accordance with the H-1B statute and regulations so as to allow the petitioner to continue to employ a nonimmigrant alien in that position. The petitioner's claim that its market-research-analyst position qualifies as a specialty occupation is not an element of proof, and it has evidentiary weight only to the extent that it is supported by the record's documentary evidence on the specific requirements of a specialty occupation under sections 101(a)(15)(H)(i)(b) and 214(i)(1) of the Act and the implementing regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A). *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)) (Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.)

The AAO disagrees with, and thus withdraws, the director's statement that the 2006-2007 edition of the *Handbook* indicated that the Market Research Analyst occupational category qualifies as a specialty occupation. While the 2006-2007 edition of the *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many market and survey research jobs, it does not indicate that the degrees held by such workers must be in a specific specialty that is directly related to market research, as would be required for the occupational category to be recognized as a specialty occupation. This is evident in comparing the first and third of the three Significant Points that introduces the 2006-2007 *Handbook's* chapter "Market and Survey Researchers":

- Market and survey researchers need at least a bachelor's degree, but a master's degree may be required for employment; continuing education also is important.
- Employment is expected to grow faster than average.
- Job opportunities should be best for those with a master's or Ph.D. degree in marketing or a related field and strong quantitative skills.

That the 2006-2007 edition of the *Handbook* does not indicate that market research analyst positions normally require at least a bachelor's degree in a specific specialty is also evident in the following

discussion in the “Training, Other Qualifications, and Advancement” section of its chapter “Market and Survey Researchers”:

A bachelor’s degree is the minimum educational requirement for many market and survey research jobs. However, a master’s degree may be required, especially for technical positions, and increases opportunities for advancement to more responsible positions. Also, continuing education is important in order to keep current with the latest methods of developing, conducting, and analyzing surveys and other data. Market and survey researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or marketing research firms prior to graduation.

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Many corporation and government executives have a strong background in marketing.

The AAO will now discuss and evaluate the evidence of record.

In its letter of response to the RFE, the petitioner describes itself as a corporation in existence since 2001 that is “engaged in traditional retail investments and sales”; that the nature of its business “includes the gas, convenience store, and retail service industry”; that its “association includes three general retail stores, namely, Triple AAA Express, Zip Trip, and Babcock Food Market,” through which it provides “a unique drive-thru shopping experience coupled with frequent discount bargains allowing us to capture the grocery store market share.” According to the letter, the three stores specialize in offering traditional local-store items as well as ethnic groceries, and, based upon demand, also provide other products, such as international calling cards and imported foods and beverages.

The petitioner’s August 25, 2006 letter submitted with the Form I-129 states that the beneficiary “will research customer organization, study the market and market segmentation, set objectives, implement the Marketing Plan to increase retail sales for all three businesses”; “be responsible to understand the concept of customer service and to advise the management to make decisions according to customer responses”; and “research and analyze any and all rate increases for all produce and products and probable acceptance by customers by considering the customer’s point of view.” The letter further states that the beneficiary will be required to “establish research methodology and design formats for data gathering, such as surveys, opinion polls or questionnaires”; “research market segmentation by separating customers into groups according to

variables such as population, age, and income, customer attitudes, motivation, values, needs [and] appreciations”; “examine and analyze statistical data” that he gathers, in order to “determine which segments of the market have not been penetrated or could result in increased sales”; “plan programs to attract targeted customer market segments”; and “analyze the present and the past operations of the company and estimate future revenues and expenditures.” “More importantly,” states the letter, the beneficiary “will be required to analyze operating statements, review cost control programs and make recommendations to the management.” He will also “be required to increase the sales and customer patronage through advertisement, sales promotion, and public relations.” The petitioner approximates that the beneficiary’s work time will be divided as follows: 35% in research and data gathering; 35% in analyzing data and developing solutions to marketing problems; 20% in developing marketing strategies; and 10% in writing reports and advising management.

The AAO notes that the August 25, 2006 letter neither explains nor is accompanied by documentary evidence showing the particular methodologies and analytical tools that the beneficiary will employ require or are usually associated with at least a bachelor’s degree in a specific specialty. The AAO also finds that the beneficiary’s duties are so abstractly stated in the letter that they do not convey the specific nature of the work that he would actually perform and, therefore, do not indicate the nature and level of education that the work requires.

The petitioner’s letter of response to the RFE indicates that, during his employment under the previously approved H-1B petition, the beneficiary has analyzed operating statements; reviewed cost control programs; forecast the profitability of new products; prepared several studies, profit reports and market reports in which he proposed “various managerial strategic recommendations”; prepared a Sale and Enhanced Marketing Report for two of the petitioner’s affiliated stores, based upon questionnaires that he developed, which outlined various determinants of customer expectations; and prepared a five-year profit report, which was significant in the acquisition of the Babcock Food Market mentioned above and which contained itemized costs associated with that store and allocated percentages to operating expenses.

The petitioner’s letter of response to the RFE also states that, during the H-1B extension period for which the present petition seeks approval, the beneficiary will research market segmentation, develop a marketing plan to increase sales, apply an understanding of the concept of customer orientation, advise the petitioner regarding managerial operations, and, “most importantly,” ensure the increase of sales and profitability for the petitioner’s market areas. The letter further states:

Specifically, he will assess and evaluate the management of all product objectives and identify potential problems and opportunities; make recommendations for addition and removal of products; coordinate with corporate management and suppliers; [and] supervise the development and production of appropriate product placement. In performing his duties he will be dividing approximately 35% of his time in research and data gathering, approximately 35% in analyzing the data & developing solutions to marketing problems, approximately 20% in developing marketing strategies, and approximately 10% in writing reports and advising management. . . .

As evident in the descriptions of the beneficiary's past and future work above, the petitioner describes the proffered position exclusively by generalized statements of broad functions. These statements do not convey whatever applications of highly specialized knowledge in a specific specialty the functions might entail when performed in the context of the petitioner's business. For example: the petitioner does not identify the analytical methods employed in the beneficiary's analysis of operating statements, review of cost control programs, and forecasts of profitability; does not explain what theoretical and practical application of highly specialized knowledge would be involved in the beneficiary's market-segmentation research; and provides no specific information about the "research and data gathering," data analysis, and solution development that the beneficiary will perform.

The petitioner provided two examples of the beneficiary's work product, namely, a Sale and Enhanced Marketing Report for Fine Food Mart and Zip Stores (Marketing Report) and a Five-Year Profit Projection Report (PPR). The AAO finds nothing in the Marketing Report that demonstrates that it is the product of the theoretical and practical application of at least a bachelor's degree level of highly specialized knowledge in marketing, marketing analysis, or any related specialty. The narrative consists of fundamental concepts that are not indicative of a particular level of academic achievement in any specialty. The report's data is relatively simple and does not indicate the application of any complex analytical methodologies. The PPR consists of a summary page and a single page of dollar amounts and percentages attributed to various categories related to sales, profits, operating expenses, total expenses, and net profit before tax. The document is not accompanied by worksheets or any explanation of the methodology for arriving at the figures. As such, the AAO cannot determine the nature and level of knowledge required to produce the report.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty-occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

Even if the generic statements that comprise the information about the proffered position and its duties were sufficient to align the position with the broad occupational category of Market Research Analysts as discussed in the *Handbook*, this position has not been established as a specialty occupation. As already indicated in the discussion of the 2006-2007 *Handbook*, employers of market research analysts do not normally require at least a bachelor's degree, or its equivalent, in a specific specialty. This fact is also clear in the following excerpt from the "Training, Other Qualifications, and Advancement" section 2008-2009 *Handbook's* chapter "Market and Survey Researchers, which indicates that a major or concentration in a specific specialty is not a normal aspect of the baccalaureate threshold for entry into the market-research-analyst occupation:

#### **Training, Other Qualifications, and Advancement**

A bachelor's degree is usually sufficient for entry-level market and survey research positions. Higher degrees may be required for some positions, however. Continuing

education and keeping current with the latest methods of developing, conducting, and analyzing surveys and other data also is important for advancement.

***Education and training.*** A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree may be required, especially for technical positions.

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines.

While in college, aspiring market and survey researchers should gain experience gathering and analyzing data, conducting interviews or surveys, and writing reports on their findings. This experience can prove invaluable later in obtaining a fulltime position in the field, because much of the initial work may center on these duties. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or marketing research firms prior to graduation.

As the *Handbook* indicates that entry into the market-research-analyst occupation may occur with a degree with coursework in the listed subjects but without a specific course of study leading to a specific degree in the field, market research analyst positions do not categorically qualify under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) as read in the context of the statutory and regulatory definitions of specialty occupation. This information from the *Handbook* does not by itself preclude a particular market-research-analyst position from qualifying as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). However, it is incumbent on the petitioner to establish that its particular position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties. This the petitioner has failed to do.

The AAO finds that the evidence of record does not indicate that the particular position before it is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. In this regard, the AAO notes that, as reflected in its earlier discussions about the examples of the beneficiary's work-product and the petitioner's generalized descriptions of the duties of the proffered position, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The record's evidence is not sufficiently specific and concrete to distinguish the proffered

position from positions in the market-research-analyst occupational category that do not normally require at least a bachelor's degree, or its equivalent, in a specific specialty.

As the evidence of record does not establish that the particular position proffered here is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for market-research-analyst positions, including degrees not in a specific specialty related to market research analysis. As evident in the earlier discussion about the generalized descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than market research analyst positions that can be performed by persons without a specialty degree or its equivalent.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree

in a specific specialty. As reflected in the earlier discussion of the limited information about the proffered duties, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than market research analyst positions that are not usually associated with a degree in a specific specialty.

The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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.

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