U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

[redacted]

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FILE: EAC 07 115 51896 Office: VERMONT SERVICE CENTER Date: MAY 05 2009

IN RE: Petitioner: [redacted]
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:

[redacted]

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center 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 non-profit school for children and young adults with behavioral problems, and seeks to employ the beneficiary as a special education teacher. The petitioner endeavors to classify 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). The director denied the petition because the beneficiary was not qualified for the proffered position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation if required, and must show completion of a degree in the specialty required for the occupation. If the alien lacks the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to such a degree, and must show recognition of the beneficiary's expertise in the specialty built on the experience from progressively responsible positions in the specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

> (*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
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> (*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
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> (*3*) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
>
> (*4*) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

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

The petitioner is seeking the beneficiary's services as a special education teacher. The petitioner indicated in a February 26, 2007 letter that the beneficiary possessed a Juris Doctor degree from Ateneo de Manila University School of Law, and a Bachelor of Arts degree in political science from the University of the

Philippines. Additionally, the petitioner claimed that the beneficiary was scheduled to take the California Basic Educational Skills Test (CBEST).

The director found that the initial evidence was insufficient to demonstrate that the beneficiary was qualified for the proffered position. Consequently, a request for evidence was issued on May 3, 2007 which requested additional evidence of the beneficiary's qualifications, including an evaluation of the beneficiary's foreign credentials and a copy of the beneficiary's teaching license. In a response received on July 20, 2007, the petitioner provided a credentials evaluation which confirmed that the beneficiary's foreign degrees were the equivalent of a U.S. bachelor's degree and juris doctor degree. The petitioner also submitted a copy of the beneficiary's CBEST results, indicating that he passed this test on June 16, 2007, and a portion of the California Education Code pertaining to alternative licensure. Finally, the petitioner submitted copies of approval notices for other H-1B petitions filed by the petitioner.[1]

The director denied the petition finding that the beneficiary was not qualified for the proffered position. Specifically, the director noted that the beneficiary's educational background did not qualify him for a teaching position in the field of special education. Moreover, the director noted that the record was devoid of evidence to demonstrate that the beneficiary was alternatively qualified under the provisions of sections 44300-44303 of the California Education Code, since the record contained no evidence that the beneficiary was enrolled in the required program nor that he possessed a temporary permit. Finally, the director noted that while the petitioner relied on prior H-1B approvals as evidence of the beneficiary's eligibility, the prior approvals regard separate records of proceeding and therefore have no influence on the disposition of this matter.

On appeal, the petitioner claims that the director's denial lacked merit and reflected a disregard of the compelling evidence submitted by the petitioner. The petitioner submits copies of the form entitled "Application for Temporary County Certificate" filed on behalf of several of its employees; however, it is noted that no such application was filed on behalf of the beneficiary.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. The *Handbook* indicates:

> All 50 States and the District of Columbia require special education teachers to be licensed. The State board of education or a licensure advisory committee usually grants licenses, and licensure varies by State. In some States, special education teachers receive a general education credential to teach kindergarten through grade 12. These teachers then train in a specialty, such as learning disabilities or behavioral disorders. Many States offer general

[1] The petitioner also submitted evidence such as job announcements and excerpts from the Department of Labor's Occupational Outlook Handbook in support of the contention that the proffered position was a specialty occupation. As properly noted by the director, the position of special education teacher is indeed considered a specialty occupation; therefore, this evidence need not be considered on appeal.

> special education licenses across a variety of disability categories, while others license several different specialties within special education.
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> * * *
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> Most States also offer alternative routes to licensing which are intended to attract people into teaching who do not fulfill traditional licensing standards. Most alternative licensure programs are open to anyone with a bachelor's degree, although some are designed for recent college graduates or professionals in other education occupations. Programs typically require the successful completion of a period of supervised preparation and instruction and passing an assessment test. Individuals can then begin teaching under a provisional license and can obtain a regular license after teaching under the supervision of licensed teachers for a period of 1 to 2 years and completing required education courses through a local college or other provider.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. Furthermore, pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*3*), to qualify to perform services in a specialty occupation an alien must hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment. *See also* 8 C.F.R. § 214.2(h)(v).

The beneficiary holds what is determined to be the equivalent of a Bachelor of Arts in Political Science and a Juris Doctor degree. The record contains no evidence that the beneficiary's degrees pertain to the field of special education; therefore, the director correctly determined that the beneficiary was not qualified for the proffered position on the basis of education alone. Moreover, no evidence that the beneficiary possesses a license or temporary/emergency permit is contained in the record. Although the petitioner, on appeal, contends that the beneficiary is qualified for the position, the petitioner provides no clear basis for the beneficiary's eligibility. Specifically, the petitioner contends that the director arbitrarily and capriciously held the petitioner to the requirement that the beneficiary possess a license or temporary permit. The petitioner claims that it is not subject to such licensing requirements, and is authorized to hire teachers and require them to participate in a credentialing program. Moreover, it claims that it previously employed persons who possessed interim permits, and claims that such permits were sufficient to allow these persons to commence employment.

The petitioner's assertions are not persuasive. While the AAO acknowledges that alternative licensure is in fact the route the beneficiary would pursue in this matter, the beneficiary has not satisfied the prescribed requirements. The portion of the *Handbook* pertaining to alternative licensure, as contemplated by the California Education Code, states:

> Programs typically require the successful completion of a period of supervised preparation and instruction and passing an assessment test. Individuals can then begin teaching under a provisional license and can obtain a regular license after teaching under the supervision of

> licensed teachers for a period of 1 to 2 years and completing required education courses through a local college or other provider.

While the record contains a transcript copy of the beneficiary's CBEST verification and the beneficiary's foreign credentials evaluation, the evidentiary record does not contain a California teaching credential issued to the beneficiary, nor does the record indicate that the beneficiary is enrolled in a teaching credentials program. Moreover, the petitioner submits no evidence that the beneficiary is working under the supervision of an approved authority. Although the petitioner submits copies of applications for temporary county certificates on behalf of several employees, the record contains no evidence that a similar application has been filed for the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

While the beneficiary's successful completion of the CBEST may in fact permit him to begin teaching in certain circles, the CBEST test was taken by the beneficiary on June 16, 2007, nearly three months after the filing of the petition on March 21, 2007. At the time of filing, therefore, the beneficiary merely possessed a bachelor's degree and a juris doctor degree in fields unrelated to special education. At that time, the record contained no evidence that the beneficiary was enrolled in a supervised course of instruction, had successfully passed the CBEST, or was in possession of a temporary permit. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Finally, the petitioner contends that the AAO should approve the petition because the director has previously approved several Form I-129 petitions that classified the beneficiaries as nonimmigrant workers in specialty occupations 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). This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in those prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition. In fact, based on the statements made by the petitioner in its letter dated July 20, 2007, it appears that these other petitions were for some type of student teacher position and not for a special-education teacher, the position proffered in this case. As such, they appear irrelevant to the matter at hand.

Regardless, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition were approved based on evidence substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. USCIS is not required to approve 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). Neither USCIS nor

any other 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).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.