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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

[Redacted]

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FILE: [Redacted] Office: [Redacted] Date: **APR 05 2011**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*for Michael T. Kelly*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, [REDACTED] denied the nonimmigrant visa petition. 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 home health care services provider and claims to have twenty-two employees. It seeks to employ the beneficiary as a corporate/management accountant. Accordingly, 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 determining that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's April 2, 2009 request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's August 14, 2009 denial letter; and (5) the Form I-290B, with counsel's brief and accompanying evidence. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job 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 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

- (I) 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 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, 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. *Cf. 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 petitioner claims to seek the beneficiary's services as a corporate/management accountant. In its February 11, 2009 letter of support, the petitioner indicated that the beneficiary's job duties are as follows:

- Record, analyze and interpret the financial information of the company.
- Responsible for budgeting, cost, assets and investment management where all are important to arrive at a sound business decision.
- Involved in strategic planning, forecasting and projection of future business revenues and expenses.
- Review and audit contracts of company and prepare reports to substantiate transactions prior to settlement.
- Will supervise the work of a Bookkeeping Clerk.

The petitioner further claimed that the beneficiary possessed a bachelor's degree in business administration with a major in accounting, and was a Certified Public Accountant (CPA) in the [REDACTED]

In the RFE dated April 4, 2009, the director requested additional information to establish that the proffered position is in fact a specialty occupation. Specifically, the director requested more detailed evidence demonstrating that the proffered position was a specialty occupation, including but not limited to information pertaining to the petitioner's business, its hiring practices, its accounting system, and its organizational chart. The director also requested evidence from industry-related professional associations, as well as firms or individuals in the industry, which regularly employed and/or recruited accountants.

In response, the petitioner submitted a letter dated April 17, 2009, in which it addressed the director's requests. The petitioner stated that it is a home health agency that provides short-term acute medical care and rehabilitation. The petitioner further indicated that it had a Finance and Accounting Department, as evidenced by its organizational chart, which employed a CFO/controller, a biller, a bookkeeper, and the beneficiary as an accountant and "payable/disbursement officer" and that the department used a Peachtree Accounting software which handled the input of payroll, check receipts and disbursements, accounting entries and various reports. The petitioner explained that the company also used a home health software system called [REDACTED] which assisted in the billing process and transmitted claims to [REDACTED] but indicated in the body of the letter that the beneficiary used only the [REDACTED] software. Finally, the petitioner stated that it used [REDACTED] Consulting for its year-end [REDACTED] cost report and [REDACTED] CPA, for its year-end corporate federal / franchise tax returns. No additional details regarding the beneficiary's position were submitted.

On August 14, 2009, the director denied the petition. The director noted that several discrepancies in the record, such as the fact that the beneficiary, as the petitioner's accountant, did not prepare the company's income tax returns, raised questions regarding the legitimacy of the proffered position. The director further noted that the evidence of record failed to demonstrate that the proffered position was that of an accountant or

that the petitioner's enterprise required the services of a full-time accountant. The director concluded that the petitioner had not established the proffered position as a specialty occupation.

On appeal, counsel for the petitioner asserts that the director's denial was erroneous. Specifically, counsel contends that the position is in fact an accounting position, and submits an updated organizational chart demonstrating the beneficiary's position in the organizational hierarchy. Counsel also submitted a letter from the petitioner dated September 3, 2009 which provides an updated description of the duties of the proffered position.

As a preliminary matter, the AAO will address the newly-submitted evidence included with the Form I-290B on appeal. The AAO notes that, in discussing the basis for the denial, the director noted that the organizational chart submitted in response to the RFE identified the beneficiary simply as "accountant," and not "corporate/management accountant" as claimed on the Form I-129. Additionally, the director noted that the duties of the beneficiary in relation to the organizational hierarchy failed to demonstrate that the position required the specialized and complex knowledge of a degreed accountant.

On appeal, the petitioner submits a new organizational chart, which alters the title of the beneficiary to "corporate/management accountant" and demonstrates that he oversees a bookkeeper, where formally the position of accountant, filled by the beneficiary, also supervised his other position of payable/disbursement officer. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Additionally, the petitioner provided an expanded list of the duties of the proffered position on appeal, which include new tasks not specifically identified in the record of proceeding. As discussed above, the petitioner cannot materially change a position's level of authority within the organizational hierarchy or the associated job responsibilities. Again, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Id.* Therefore, the analysis of whether the proffered position is a specialty occupation will be based on the job description submitted with the initial petition.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a baccalaureate or higher degree in a specific specialty.

The petitioner has stated that the proffered position is that of a corporate/management accountant. To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO turns to the 2010-2011 online edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the vague and general duties described by the petitioner. As stated by the *Handbook*, management accountants:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management . . . . They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.<sup>1</sup>

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would more likely than not require the beneficiary to have an understanding of accounting principles. However, that a position bears an accountant title and involves the application of accounting principles does not in itself establish a position as a specialty occupation. The question is not whether the petitioner's position requires knowledge of accounting principles, which it apparently does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

The *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Some graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to accountant positions by demonstrating their accounting skills on the job.

Most beginning accountants and auditors may work under supervision or closely with an experienced accountant or auditor before gaining more independence and responsibility.

The *Handbook* also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

Clerks who can carry out a wider range of bookkeeping and accounting activities will be in greater demand than specialized clerks. For example, demand for full-charge bookkeepers is expected to increase, because they can perform a wider variety of financial transactions, including payroll and billing. Certified Bookkeepers (CBs) and those with several years of

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<sup>1</sup> *Occupational Outlook Handbook*, 2010-2011 Edition, at [www.bls.gov/oco/ocos001.htm](http://www.bls.gov/oco/ocos001.htm).

accounting or bookkeeping experience who have demonstrated that they can handle a range of tasks will have the best job prospects.<sup>2</sup>

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired by less than attainment of a bachelor's degree, or the equivalent, in accounting, the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant, as correctly noted by the director. The AAO notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a Mexican Wholesale Grocery v. Department of Homeland Security*, 467 F. Supp. 728 (E.D. Mich. 2006). In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a body of highly specialized knowledge that may be obtained only through a baccalaureate degree or higher in accounting or its equivalent.

At the time of filing, the petitioner stated that it commenced operations as a home health agency in 2002 and currently employed twenty-two. It further claimed to have a gross annual income of \$2,195,207. However, the petitioner's Form 1120S, U.S. Income Tax Return for an S Corporation, for the years 2006 and 2007 demonstrate that an outside CPA, [REDACTED], prepared and filed the returns on behalf of the petitioner. Since the petitioner claims that its business is expanding and therefore requires the services of a full-time accountant, it is unclear why the petitioner must employ an independent CPA to prepare its income tax returns as well as [REDACTED] Consulting to prepare its year-end [REDACTED] cost report. These contradictions raise questions regarding the validity of the petitioner's claims. As noted by the director, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

In response to the request for evidence, the petitioner indicates that it has plans for further expansion and that it is the rapid and continuing growth of the company that necessitates a full-time corporate/management accountant. The AAO acknowledges that the process of expanding a business's operations could potentially establish financial and operational complexities that would require a degreed accountant. Accordingly, the AAO has reviewed the record for evidence of the petitioner's growing business, as well as its financial structure and operations, to determine whether the accounting employment described by the petitioner would impose such a degree requirement on the beneficiary. However, the fact that an independent CPA is still preparing the petitioner's tax returns, coupled with a review of the numerous invoices submitted in response to the RFE, does not shed light on the complexity or level of specialized knowledge of the accounting work to be performed by the beneficiary.

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<sup>2</sup> *Occupational Outlook Handbook*, 2008-2009 Edition, at [www.bls.gov/oco/ocos144.htm](http://www.bls.gov/oco/ocos144.htm).

Based on the discrepancies regarding the claimed nature of the position and the continued employment of an independent CPA and consulting firm to prepare critical year-end financial reports and returns, it appears that the proffered position's duties will more likely than not be those of a bookkeeper.

The *Handbook* describes the position of bookkeeper as follows:

In small businesses, *bookkeepers and bookkeeping clerks* often have responsibility for some or all the accounts, known as the general ledger. They record all transactions and post debits (costs) and credits (income). They also produce financial statements and prepare reports and summaries for supervisors and managers. Bookkeepers prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. Additionally, they may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

This description of duties appears to accurately describe the duties of the proffered position.

The *Handbook* describes the educational requirements of a bookkeeper as follows:

Employers usually require bookkeeping, accounting, and auditing clerks to have at least a high school diploma and some accounting coursework or relevant work experience. Clerks should also have good communication skills, be detail oriented, and trustworthy.

***Education and training.*** Most bookkeeping, accounting, and auditing clerks are required to have a high school degree at a minimum. However, having some postsecondary education is increasingly important and an associate degree in business or accounting is required for some positions. Although a bachelor's degree is rarely required, graduates may accept bookkeeping, accounting, and auditing clerk positions to get into a particular company or to enter the accounting or finance field with the hope of eventually being promoted.

According to the *Handbook*, a bachelor's degree in a specific specialty is not required for entry into the proffered position.

Accordingly, the record offers no meaningful evidence to establish that the accounting duties to be performed by the beneficiary in relation to the petitioner's claimed operations are sufficiently complex or specialized to require the services of a degreed accountant. As discussed above, and despite the petitioner's claims to the contrary, the proffered position appears more likely than not to be that of a bookkeeper, a position which does not require an individual who holds a degree in a specific specialty. Accordingly, 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 alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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. Factors considered by the AAO

when determining this criterion include 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)). In the instant matter, the petitioner has not submitted evidence that responds to either prong of the criterion.

The petitioner submitted no documentary evidence to establish its degree requirement as the norm within its industry under the first prong of the criterion. The AAO notes, however, that the petitioner submitted a letter from [REDACTED] CPA, who claims that he has been a business consultant and licensed CPA for over two decades in [REDACTED]. [REDACTED] claims that "it is advantageous for agencies like the current Petitioner to have their own skilled accountants that could strengthen their internal control procedures, assist in the timely filing and accurate preparation of their payroll and financial reports, help in the periodic assignments of filed RNs and other professionals, as well as speak the language of their clients and/or customers." [REDACTED] statement, however, is supported by no independent evidence that demonstrates that similar companies routinely hire degreed accountants for similar positions. Simply stating that it is "advantageous" to hire such individuals is insufficient to establish a hiring standard in the industry.

In the alternative, the petitioner may show under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) that the proffered position is so complex or unique that only an individual with at least a bachelor's degree in a specific specialty can perform the work associated with the position. The petitioner's failure to submit sufficient information related to its claimed business expansion plans, and its failure to explain why it still requires the services of independent accountants to prepare financial reports precludes it from establishing that the position's complexity or unique nature distinguish it from accounting-related employment that is performed with less than a four-year degree, or its equivalent, in a specific specialty. 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)). Therefore, the petitioner has failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which requires that the employer demonstrate that it normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant matter, while the petitioner provided the names and position titles of its finance/accounting department, it made no claim that it had previously hired a corporate/management accountant. Therefore, the evidence does not establish that the petitioner has ever employed a corporate/management accountant on a full-time basis. Since the petitioner has not established that it previously employed a degreed accountant in the proffered position, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>3</sup>

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<sup>3</sup> To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence to indicate that the beneficiary's duties would require greater knowledge than that normally possessed by a bookkeeper, a junior accountant, or holder of any other accounting position not usually associated with a bachelor's or higher degree in a specific specialty. Further, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a bookkeeper or at most a junior accountant.

In reaching its decision, the AAO has again considered the petitioner's letter dated February 11, 2009 and its response to the RFE dated April 17, 2009. Both letters provide a vague and generalized overview of accounting duties. However, absent an explanation as to why critical but basic accounting tasks, such as preparing tax returns and financial reports, are being outsourced to other companies, there is an inadequate factual foundation to support a finding that the proposed duties are as specialized and complex as required by the regulations to qualify as a specialty occupation. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a typical bookkeeper or junior accountant or that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree or its equivalent in accounting. The totality of the record does not establish the proffered position is a specialty occupation based on a claimed complex and specialized nature as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Additionally, the record indicates that USCIS approved a prior petition filed by the petitioner on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions

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requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

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).

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 the nonimmigrant petition on behalf of the 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).

The prior approval does not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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.