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U.S. Citizenship
and Immigration
Services

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FILE: WAC 06 199 50458 Office: CALIFORNIA SERVICE CENTER Date: **JAN 15 2009**

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:

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 director of the California 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 an Islamic parochial school with a reported gross income of approximately \$651,000. It seeks to employ the beneficiary as a teacher/lecturer. The petitioner, therefore, 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).

The director denied the petition on July 9, 2008, on the following grounds: (1) that the petitioner failed to establish a reasonable and credible offer of employment; and, (2) that the petitioner violated the terms and conditions of the approved petition through its failure to pay the proffered wage listed on the petition and the LCA.

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

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

U.S. Citizenship and Immigration Services (USCIS) interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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 (5th Cir. 2000). 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 states that it is seeking the beneficiary’s services as a teacher/lecturer. In a letter of support, dated May 22, 2006, the petitioner described the beneficiary’s proposed duties as follows:

We are a full time Islamic parochial school that serves children from pre-kindergarten through seventh grade. Our current plan is to extend one grade each year thru 8th grade. Next year we will begin an eighth grade program. At this time we have 202 students attending full time, most of our students reside in Staten Island with a few coming from Brooklyn and New Jersey. We have five part time and 23 full time teachers.

We are seeking to extend H-1B status for [the beneficiary] as an Islamic studies teacher for grades three to seven at this time, and next year to 8th grade, as we grow. [The beneficiary] will be teaching classes of approximately twenty to twenty-five students on a daily basis in such areas as Islamic belief, ethics, worship, and the philosophy of religion generally.

The director determined that the petitioner had submitted insufficient evidence to process the petition. On February 6, 2008, the director requested documentation evidencing the beneficiary's proposed duties, and requested the following: (1) evidence that the beneficiary was authorized to work as an Imam, and evidence to clarify how the beneficiary was able to perform his duties as both an Imam and as a teacher; (2) copies of all employment contracts with the beneficiary for the period of time the beneficiary has worked for the petitioner; (3) copies of the beneficiary's IRS Form 1040, U.S. Individual Tax Return; and, (4) original Internal Revenue Service generated transcripts of the beneficiary's Forms 1040 from 2003 to the present.

In the petitioner's response letter, dated April 3, 2008, the petitioner further described the proposed position as follows:

You note that the position is for a teacher of Islamic Studies, but also note that Service records indicate that the beneficiary has been performing for the petitioner as an Imam and request evidence of work authorization as an Imam and how duties as both teacher and Imam can be performed. In fact, the original H-1B is an Islamic Studies Teacher. The I-360 indicated that he is a religious leader and teacher. From March 12, 2005, through March 11, 2007, the beneficiary has been in H-1B status as an Islamic Studies Teacher (one facet of being an Imam) which is a full time religious occupation. As a Teacher of Islamic Studies, the beneficiary teaches such subjects as: Basics of Islamic Beliefs, Methods of Islamic Worship, Islamic Manners and Behaviors, Islamic History and Social Studies, as well as Proper Societal Behavior. He also leads prayer among the student body on a daily regular basis. The work is generally overseen by the school principal. The beneficiary teaches approximately 40 hours a week of which 15 hours a week are classroom hours, 5 hours per week are leadership and instruction in prayers, 10 hours are given to class preparation and administration, and the balance of 10 hours as guidance counselor in personal and religious subjects for students and parents. The roles as teacher and prayer leader are both integral and inseparable in the teacher's role- or in the Imam's role. In fact, we are surprised that this is an issue as I am sure that the Service has adjudicated many petitions from Imams/teachers and that training to adjudicate such petitions for religious personnel would include this subject.

However, as you raise an issue about multiple references to the beneficiary's activities as an Imam and request evidence that the beneficiary is able to work as an Imam as well as to perform duties as both an Imam and teacher at the Islamic School we would like to first clarify any confusion regarding the role of an Imam. We are of the Sunni tradition. According to the definition of "Imam" found in the [Encyclopedia Britannica Online](#), the "Imam", in our context, is the leader of the Islamic community. This individual is the prayer leader and a respected Islamic scholar. He is the primary teacher and religious leader of the Islamic community. It may be noted that this role is similar to the role of a Rabbi in Judaism.

Traditionally, within our stream of Islam, the Imam has had many years of study before he is appointed as an Imam.

The director denied the petition on July 9, 2008, concluding that the petitioner did not demonstrate the existence of a reasonable and credible offer of employment. The director noted that the petitioner did not provide sufficient evidence to “show how the beneficiary’s general activities as an Imam for [the petitioner], or any associated teaching activities in the capacity of an Imam at [the petitioner’s business], are consistent with the duties of the religious teacher position proffered in the instant petition.”

On appeal, counsel states that the beneficiary will perform duties as a teacher and perform ancillary duties as an Imam. Counsel further cites to an article and asserts that it demonstrates that “the role of the Imam has become similar in the United States to the role of minister or rabbi, who are spiritual leaders, as well as teachers.”

Upon review of the record, the petitioner did not overcome the director’s denial. As mentioned above, the initial petition indicated that the proffered position is for teacher/lecturer. After the request for evidence, the petitioner indicated that the beneficiary will also perform duties as an Imam. The petitioner asserted that an Imam is a teacher and “the roles as teacher and prayer leader are both integral and inseparable in the teacher’s role- or in the Imam’s role.” On appeal, counsel for the petitioner cited to an article regarding changes to common mosque practices in the United States which said that “by far the most significant of these [changes] has been to accept a professionalized clergy in the form of hired Imam.”

On appeal, the petitioner also submitted a letter from the Islamic Circle of North America, dated August 4, 2008, that explained the duties of an Imam as follows:

This is to certify that a qualified Imam is capable and authorized to lead five times daily prayers, Friday services, Eid prayers, all services during the month of Ramadan, funeral services, performing marriage ceremonies, counseling, inter-faith dialogue, giving sermons, talks and lectures on special occasions, and teaching various Islamic subjects (Al-Qur’an, Hadith, Fiqh, Seerah, Islamic [H]istory) at different levels, school as well as college.

The AAO accepts the petitioner’s argument that the role of the Imam for the petitioner may include the duties of a teacher. However, it is not clear how the beneficiary can perform full-time duties as a teacher and also perform duties as an Imam, as described above. As noted in the petitioner’s letter, dated April 3, 2008, “the beneficiary has been in H-1B status as an Islamic Studies Teacher (one facet of being [an] Imam) which is a full time religious occupation.” In reviewing all the support letters submitted with the instant petition from members of the petitioner’s community, each letter refers to the beneficiary as “Imam.” Thus, if the Imam is a full-time religious occupation and the duties of a teacher require a full-time position, it is unclear precisely what tasks the beneficiary would perform for the petitioner on a daily basis. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent

objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner's description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention. The petitioner's listing of these duties is so generic, and nonspecific that it precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner. Without a specific description, the AAO is unable to determine whether the responsibilities of the proffered position would require the beneficiary to hold the minimum of a baccalaureate or higher degree or its equivalent to perform them. Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position as described by the petitioner is that of a teacher/lecturer or that it is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Furthermore, as the duties of the proffered position are not clearly defined, the petitioner failed to establish the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the AAO finds that the proffered position is not a specialty occupation.

In determining whether a proposed position qualifies as a specialty occupation, USCIS looks beyond the title of the position. USCIS determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. 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. As noted above, the position description includes duties of a teacher, clergy and a religious leader. Since the petitioner failed to clearly characterize its position as that of a teacher/lecturer, the AAO is unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this subpart requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. To meet the burden of proof

imposed by the regulatory language, a petitioner must establish that its degree requirement exists in positions that are parallel to the proffered position and found in organizations similar to the petitioner. There is no information in the record to establish this criterion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *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). Accordingly, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a demonstration that the position is so complex or unique that it can only be performed by an individual with a degree. Without a reliable description of the work to be performed by the beneficiary, a petitioner cannot establish that the tasks he would perform are of sufficient complexity to impose the minimum of a baccalaureate degree or its equivalent. 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 at 165.

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally 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. The petitioner did not submit any documentation evidencing that it normally requests a degree or its equivalent for this position. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Accordingly, the petitioner has not established the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Therefore, for the reasons related in the preceding discussion, the proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The proposed position in this petition is not a specialty occupation, so the beneficiary's qualifications to perform its duties are inconsequential. Accordingly, the AAO will not disturb the director's denial of the petition.

The last issue to be discussed is whether the petitioner's statement on the LCA was true and correct. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(2) requires that the petitioner submit a statement that it will comply with the terms and conditions of the LCA for the duration of the beneficiary's stay.

The director noted that the petitioner submitted evidence showing the wages paid to the beneficiary from 2003 through 2007; however, the beneficiary's salary was below the prevailing wage listed on the Form I-129 and the LCA. The director further noted that although the petitioner explained that the beneficiary receives "free housing through our membership," no documentation was submitted to show actual payment of the rent by the petitioner.

In response to the director's request for evidence, the petitioner submitted the IRS Form 1040, U.S. individual Tax Return, for the beneficiary to show his salary from 2004 through 2007. In addition, the petitioner explained that the beneficiary received free housing from the petitioner which consists of a two-bedroom apartment. The petitioner also stated that "comparable apartments in the area rent for approximately \$1,000 - \$1,200.00 per month." The petitioner submitted a letter from [REDACTED], dated March 24, 2008, estimating that under the "current market conditions," the rental value of the apartment is \$1,000 to \$1,200.00 per month. Thus, the petitioner contends that the beneficiary's salary, plus the residential expenses, which is approximately \$12,000 to \$14,400.00 per year, is above the prevailing wage, and thus the petitioner did not violate the H-1B requirements.

In its decision, the director cited to 20 C.F.R. § 655.715 Subpart H which states the following:

For the purposes of subparts H and I of this part:

* * *

Wage rate means the remuneration (**exclusive of fringe benefits**) to be paid, stated in terms of amount per hour, day, month or year....(Emphasis added).

The regulation at 20 C.F.R. § 655.731(c) states the following:

(c) Satisfaction of required wage obligation.

- (1) The required wage must be paid to the employee, cash in hand, free and clear, when due, except that deductions made in accordance with paragraph (c)(9) of this section may reduce the cash wage below the level of the required wage. . . .

Thus, only deductions which are specifically authorized by 20 C.F.R. § 655.731(c)(9) may reduce the beneficiary's salary below the level of the prevailing wage. The regulation at 20 C.F.R. § 655.731(c)(9) permits three types of deductions:

- (9) “Authorized deductions,” for purposes of the employer’s satisfaction of the H-1B required wage obligation, means a deduction from wages in complete compliance with one of the following three sets of criteria (i.e., paragraph (c)(9)(i), (ii), or (iii))--
- (i) Deduction which is required by law (e.g., income tax; FICA); or
 - (ii) Deduction which is authorized by a collective bargaining agreement, or is reasonable and customary in the occupation and/or area of employment (e.g., union dues; contribution to premium for health insurance policy covering all employees; savings or retirement fund contribution for plan(s) in compliance with the Employee Retirement Income Security Act, 29 U.S.C. 1001, et seq.), except that the deduction may not recoup a business expense(s) of the employer (including attorney fees and other costs connected to the performance of H-1B program functions which are required to be performed by the employer, e.g., preparation and filing of LCA and H-1B petition); the deduction must have been revealed to the worker prior to the commencement of employment and, if the deduction was a condition of employment, had been clearly identified as such; and the deduction must be made against wages of U.S. workers as well as H-1B nonimmigrants (where there are U.S. workers); or
 - (iii) Deduction which meets the following requirements:
 - (A) Is made in accordance with voluntary, written authorization by the employee (Note to paragraph (c)(9)(iii)(A): an employee’s mere acceptance of a job which carries a deduction as a condition of employment does not constitute voluntary authorization, even if such condition were stated in writing);
 - (B) Is for a matter principally for the benefit of the employee (Note to paragraph (c)(9)(iii)(B): housing and food allowances would be considered to meet this “benefit of employee” standard, unless the employee is in travel status, or unless the circumstances indicate that the arrangements for the employee’s housing or food are principally for the convenience or benefit of the employer (e.g., employee living at worksite in “on call” status);
 - (C) Is not a recoupment of the employer’s business expense (e.g., tools and equipment; transportation costs where such

transportation is an incident of, and necessary to, the employment; living expenses when the employee is traveling on the employer's business; attorney fees and other costs connected to the performance of H-1B program functions which are required to be performed by the employer (e.g., preparation and filing of LCA and H-1B petition)). (For purposes of this section, initial transportation from, and end-of-employment travel, to the worker's home country shall not be considered a business expense.);

- (D) Is an amount that does not exceed the fair market value or the actual cost (whichever is lower) of the matter covered (Note to paragraph (c)(9)(iii)(D): The employer must document the cost and value); and
- (E) Is an amount that does not exceed the limits set for garnishment of wages in the Consumer Credit Protection Act, 15 U.S.C. 1673, and the regulations of the Secretary pursuant to that Act, 29 CFR part 870, under which garnishment(s) may not exceed 25 percent of an employee's disposable earnings for a workweek.

Pursuant to 20 C.F.R. § 655.731(c)(9)(iii)(B), housing and food allowances may be a permissible deduction if it meets the "benefit of employee" standard. The employee's housing must be principally for the benefit of the employee. The regulations note that the employee's housing may not principally benefit the employee, such as requiring the employee to be "on-call." As a religious leader in the community, the petitioner may require that the beneficiary be "on-call" at all times. The petitioner did not provide sufficient documentation to establish that the housing provided to the beneficiary meets the standards under 20 C.F.R. § 655.731(c)(9)(iii)(B), and is a permissible deduction of the beneficiary's wages.

In addition, it appears that the petitioner did not pay the prevailing wage from 2004 through 2007. The petitioner did not provide evidence of the approximate rental for the apartment from 2004 through 2007. In addition, as noted by the director, the beneficiary never indicated in his Form 1040, Individual Income Tax Return, payment of his housing by the petitioner. Further, the petitioner did not provide documentation of payment of the monthly rent, such as copies of checks made by the petitioner to pay the beneficiary's monthly rent. 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)). 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). Therefore, the petitioner has not overcome the director's concerns on this issue.

Counsel suggests that the director's adjudication of the petition was unfair. However, the petitioner has not demonstrated any error by the director in conducting her review of the petition. Nor has the petitioner demonstrated any resultant prejudice such as would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

The petitioner noted that USCIS approved the first petitioner filed on behalf of the beneficiary, and approved other petitions for similar positions. The prior approvals do 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). In addition, the director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross 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 CIS 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 petitions 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 petitioner has failed to establish that the beneficiary was offered a credible offer of employment, that the position is a specialty occupation or that the petitioner followed the terms and conditions of the approved petition and paid the proffered wage listed on the petition and the LCA.

Contrary to the claims of counsel, 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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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