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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

DATE: OCT 30 2014

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

## I. FACTUAL AND PROCEDURAL BACKGROUND

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center. In the Form I-129 visa petition, the petitioner describes itself as a school system established in [REDACTED]. In order to extend the employment of the beneficiary in what it designates as a lead teacher position, the petitioner seeks to classify her 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, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, Notice of Appeal or Motion, and supporting documentation. We reviewed the record in its entirety before issuing our decision.<sup>1</sup>

For the reasons that will be discussed below, we agree with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

## II. SPECIALTY OCCUPATION

### A. The Law

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable 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

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<sup>1</sup> We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*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, a proposed position must also 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 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 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.



As such and 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. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

#### B. The Proffered Position

In the Form I-129 Supplement, the petitioner described the proposed duties as "design, implement and evaluate lesson plans." The petitioner did not state educational requirements or provide additional information regarding the proffered position. In the Labor Condition Application (LCA) filed in support of the Form I-129, the petitioner indicated that the proffered position corresponds to the occupational classification "Teachers and Instructors, All Other" - SOC (ONET/OES) code 25-3999, at a Level I (entry level) wage.<sup>2</sup>

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE. The director outlined evidence that could be submitted.

Thereafter, counsel responded to the director's RFE, providing a more detailed description of duties for the proffered position.<sup>3</sup> However, counsel's letter was not endorsed by the petitioner and the

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<sup>2</sup> The O\*NET describes this occupational category, now identified as SOC (ONET/OES) code 25-3099, as "[a]ll teachers and instructors not listed separately." It further states that this category "represent[s] occupations with a wide range of characteristics which do not fit into one of the detailed O\*NET-SOC occupations."

As will be discussed *infra*, the petitioner is a preschool serving 2-5 year old children. We further note that the occupational category, "Preschool Teachers, Except Special Education" is separately listed under SOC (ONET/OES) code 25-2011 and a description of the occupation is provided. The petitioner does not explain why it did not select the occupational category "preschool teacher" as the category most closely aligned with the proffered position. Further, by selecting an occupational category which does not present a detailed description of the occupation, even when a more specific occupational category is available, the petitioner has failed to provide the most accurate information regarding the nature of the proffered position. For more information, see the Occupational Information Network, <http://www.onetonline.org/link/summary/25-3099.00> (last visited October 14, 2014).

<sup>3</sup> The RFE specifically stated that a response must be received on or before December 30, 2013. However, the response was not received until January 16, 2014. No explanation was provided regarding the delay.

record of proceeding does not indicate the source of the revised duties and responsibilities that counsel attributes to the proffered position. 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 description of duties provided by counsel is not probative evidence. Further, counsel submitted an excerpt from the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for the occupational classification of "Teachers-Kindergarten, Elementary, Middle, and Secondary," not for the occupational classification of "Preschool Teacher."

On appeal, the petitioner submitted a letter dated February 12, 2014. The petitioner states that "[d]uring the time [the beneficiary] was hired[,] we were in search of a Teacher for our two-year-old classroom." The petitioner also submitted an attachment entitled "Lead Teacher Job Description," which appears to be an excerpt from an employee handbook. Notably, the document was not printed on the petitioner's letterhead and was not signed. The document lists the lead teacher's responsibilities as follows:

*Supervises teaching staff:* works with, supervises and provides guidance to teachers in preparation of daily lesson plan and activities. Ensures full and proper implementation of [REDACTED] curricula as prescribed by the board. Ensures safe and clean classrooms and maintains developmentally appropriate classroom environment. Drafts Personnel Performance Appraisals and submits to the Executive Director.

Substitutes in classrooms as needed.

*Maintains classroom records:* The lead teacher maintains classroom records, including attendance records, health and safety forms and procedures, and written reports. Ensures compliance with state and local regulatory and/or licensing agencies.

*Communicates with parents regarding child's welfare:* At all times, communication with parents is to be professional and pertinent to their child's behavior and daily activities and in conformity with [REDACTED] standards of confidentiality articulated in our parents' handbook.

*Injury Management:* The lead teacher shall administer immediate and proper first aid to injury and then report injury verbally to the Executive Director. The lead teacher also writes the appropriate report on the day the injury occurs and communicates the incident to the parent during pick up.

*Role in emergency preparedness plan:* The Executive Director will assign roles in emergency preparedness plan which all teachers have responsibility in following.



*Medication administration:* Medication can only be administered by lead teacher if he/she has completed the Medication Administration Certification course. All training regarding medication administration must be taken as soon as possible after employee start date.

*Submits classroom supply orders, custodial and repair requests.* Communicates with Executive Director regarding all maintenance issues.

### C. Analysis

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. *See generally 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.

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

That is, for H-1B approval, the petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

The record of proceeding contains inconsistent information about the nature of the proffered position, which undermines the petitioner's credibility with regard to the services the beneficiary will perform, as well as the actual nature and requirements of the proffered position. When a petition includes numerous discrepancies, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions.

As noted, in the Form I-129, the petitioner stated that it is a school system and that the beneficiary would be employed as a lead teacher. On appeal, the petitioner indicates that it is a "preschool serving students from ages 2-5 years."<sup>4</sup> The petitioner further indicates that it has five classrooms with a teacher and an assistant teacher in each class. The petitioner adds that "[d]uring the time [the beneficiary] was hired, we were in search of a Teacher for our two-year old classroom." The petitioner further claims that it posted a job announcement on [REDACTED] and provides an excerpt, which describes the position as a "[f]ull-time position for a 2 year old Teacher for an established preschool servicing children ages 2-5 years of age." The petitioner also states "after narrowing [our] selection to four candidates, [we] offered [the beneficiary] [] the position." Therefore, based on the petitioner's letter submitted on appeal, it appears that the beneficiary would be a classroom teacher for a 2-year old classroom in a preschool.

However, this is inconsistent with the attachment the petitioner also provides on appeal which refers to and describes the position of a "lead teacher." Specifically, duties as a lead teacher include "supervis[ing] teaching staff" which requires "work[ing] with, supervis[ing] and provid[ing] guidance to teachers in preparation of daily lesson plan and activities." Duties also include "[s]ubstitut[ing] in classrooms as needed." In other words, the job description for a lead teacher suggests that the beneficiary would not be actively teaching a class, but would "work[] with, supervise[] and provide[] guidance to teachers in preparation of daily lesson plan and activities."

Further, as noted, in response to the RFE, counsel submitted an excerpt from the *Handbook* for the occupational classification of "Teachers-Kindergarten, Elementary, Middle, and Secondary." Counsel did not provide additional explanation on how this occupational category is relevant to the proffered position when the petitioner appears to be a preschool serving 2-5 year old children.<sup>5</sup>

Moreover, even if we found that the petitioner's description of the position as a "lead teacher" was not inconsistent with the petitioner's identification of the position as a classroom teacher for a 2-year old classroom in a preschool, the description of the duties of the proffered position offered on

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<sup>4</sup> We note that in the RFE, the director specifically requested evidence to confirm the petitioner's name and location. The only evidence submitted in response is a partial copy of the Form VA-16, Employer's Quarterly Reconciliation and Return of Virginia Income Tax Withheld, which shows the name [REDACTED] and the petitioner's address. No further explanation is provided. We also note that throughout the record of proceeding, counsel refers to the petitioner as [REDACTED]. On appeal, the petitioner claims that it was previously called "[REDACTED]" but did not provide any documentation in support of this assertion. 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).

<sup>5</sup> In the Form I-129, the petitioner identified its NAICS code as 624410, which corresponds to "child day care services." This category is described as "establishments primarily engaged in providing day care of infants or children." It further states that these establishments "generally care for preschool children, but may care for older children when they are not in school and may also offer pre-kindergarten educational programs." This is somewhat inconsistent with the petitioner's description as a preschool and also does not offer any explanation on how the proffered position corresponds to the occupational category, "Teachers-Kindergarten, Elementary, Middle, and Secondary."



appeal fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations. The description of duties lacks the specificity and detail necessary to support the petitioner's assertion that the proffered position qualifies as a specialty occupation. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will "communicate[] with parents regarding child's welfare." This statement does not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. In addition, the petitioner indicates generally that the beneficiary will "maintain classroom records" and "submit classroom supply orders, custodial and repair requests" and administer first aid to injuries and file a report of those injuries. These duties as described are not indicative of complexity, specialized knowledge, or uniqueness, and the description does not include evidence that a high level of judgment and understanding is required to perform the duties.<sup>6</sup>

In addition, the petitioner did not provide any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks listed. Thus, the petitioner failed to specify which tasks were major functions of the proffered position, and it did not establish the frequency with which each of the duties would be performed

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<sup>6</sup> The petitioner has indicated on the LCA that the proffered position corresponds to a Level I wage. The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

This designation is indicative of a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary will perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. Furthermore, DOL guidance indicates that a Level I designation is appropriate for a position (within the occupational category) as a research fellow, a worker in training, or an internship. Such a designation is inconsistent with a claim that the duties of the proffered position are supervisory, complex or require specialized knowledge.



(e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position.

The petitioner has failed to provide sufficient consistent details regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the specialty occupation work that the beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty, or its equivalent, as a minimum for entry into the occupation. The tasks as described fail to consistently communicate (1) the substantive nature and scope of the beneficiary's employment within the petitioner's business operations; (2) the actual work that the beneficiary would perform; (3) the complexity, uniqueness and/or specialization of the tasks; and/or (4) the correlation between that work and a need for a particular educational level of highly specialized knowledge in a specific specialty.

Therefore, we are precluded from finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Thus, the petitioner has failed to satisfy any of the criteria under the applicable provisions at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Moreover, as previously mentioned, with the Form I-129, the petitioner did not state education requirements for the proffered position. Rather, the petitioner appears to rely on the beneficiary's educational background and her experience to assist her in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself qualifies as a specialty occupation. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so specialized, complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment.

Further, we observe that in response to the RFE, counsel stated that the "position requires the expertise of a baccalaureate degree." However, the petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) (stating that "[t]he mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility").

Furthermore, on appeal, the petitioner states that according to its personnel policies handbook, the requirements for the teachers include "CDA [Child Development Associate credential;], Associate's Degree, or a 4 year college degree in Child Development or related field." In other words, the petitioner indicates that less than a bachelor's degree, such as an associate degree, is acceptable for entry into the position.<sup>7</sup> Such acceptance is tantamount to an admission that the proffered position is not a specialty occupation.

To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. Here, the petitioner has provided inconsistent information regarding requirements for the position, and has failed to otherwise establish that the position proffered here requires a bachelor's degree in a specific specialty for entry into the position.<sup>8</sup>

For the reasons related in the preceding discussion, the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

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<sup>7</sup> We note that the page of the personnel handbook provided in the record of proceeding indicates that educational requirements include "a graduate degree in elementary education or school administration and minimum three-year programmatic experience in early education OR a bachelor's degree in a child-relate[d] field (e.g., elementary education or early childhood development) with a minimum three years experience." These requirements differ from the requirements stated by the petitioner in its letter on appeal. Again, we note that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Here, the petitioner did not resolve the inconsistencies.

<sup>8</sup> We observe that USCIS previously approved a petition filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petitions. However, if the previous nonimmigrant petition was approved based on the same unsupported and inconsistent assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. We are 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'r 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).

Moreover, a prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. See *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, our 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, we 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).



### III. CONCLUSION AND ORDER

The petition will be denied and the appeal dismissed for the above stated reason. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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