



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF P-C-E-, INC.

DATE: AUG. 14, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a newspaper organization, seeks to temporarily employ the Beneficiary as a “reporter” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the proffered position is a specialty occupation.¹

On appeal, the Petitioner submits additional evidence and contends that the petition should be approved.

Upon *de novo* review, we will dismiss the appeal.²

I. LEGAL FRAMEWORK

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.

¹ The Director’s comments regarding the educational requirements of typical positions located within this occupation are hereby withdrawn. The Director does not cite to any authoritative or objective source to support this statement.

² We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). We have consistently interpreted the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed 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”); *Defensor*, 201 F.3d at 387.

II. PROFFERED POSITION

The Petitioner stated in the H-1B petition that the Beneficiary will serve as a “reporter.” In response to the Director’s request for additional evidence (RFE), the Petitioner stated that the Beneficiary would perform the following duties (note: errors in original text have not been changed):

- 10% Work with fellow reporters to generate story ideas
- 20% Write headlines and captions, contribute to editing of articles and provide additional reporting
- 10% Responsible for independently creating, developing and managing daily content as assigned, including high and mid-level content
- 10% Create a news briefing page covering the most heatedly discussed topics of the week to be shared with other locations of our weekly newspaper
- 10% Select news articles from major newspapers as relates to the Chinese-American community
- 10% Provide suggestions on news writing skills to reporters, determine style, edit copies to meet established tone and theme requirements and enhance assigned content
- 10% Coordinate coverage of breaking news to ensure timeliness and accuracy

- 10% Review, fact check, and edit all articles, including those written by reporters, to ensure the highest level of accuracy in reporting, appropriate tone and context of articles, proper source checking and submission of articles by established deadlines
- 10% Exercise independent discretion and judgment in researching and writing content-appropriate and engaging stories including features³

The Petitioner stated that the position requires a bachelor's degree, and preferably a master's degree, in communications, journalism, mass media, language/literature, teaching or another area related to written communications.

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.⁴ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁵

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁶

On the labor condition application (LCA)⁷ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Reporters and Correspondents"

³ The Petitioner provides additional details about the duties of the position on appeal. We reviewed the record in its entirety.

⁴ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁵ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

⁶ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and U.S. Citizenship and Immigration Services (USCIS) regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁷ The Petitioner is required to submit a certified LCA to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the "area of employment" or the actual wage paid by the

corresponding to the Standard Occupational Classification code 27-3022.⁸ The *Handbook's* chapter entitled "How to Become a Reporter, Correspondent, or Broadcast News Analyst" states in pertinent part: "Most employers prefer workers who have a bachelor's degree in journalism or communications. However, some employers may hire applicants who have a degree in a related subject, such as English or political science, and relevant work experience."

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupational category. According to the *Handbook*, most employers *prefer* workers who have a bachelor's degree in journalism or communications. However, a *preference* for such a degree does not establish that it is normally the minimum requirement for entry into the particular position. Further, the *Handbook* states that some employers may hire applicants who have a "degree" in a related subject and relevant work experience but does not specify the level of such a degree, or that the degree and relevant work experience must be equivalent to a bachelor's degree in a specific specialty.⁹ Therefore, the *Handbook* does not support the Petitioner's assertion regarding the educational requirements required for entry into this occupation.

In support of the petition, the Petitioner cited to the DOL's Occupational Information Network (O*NET) summary report in its RFE response. The summary report provides general information regarding the occupation; however, it does not support the Petitioner's assertion regarding the educational requirements for these positions. For example, the Specialized Vocational Preparation (SVP) rating cited within O*NET's Job Zone designates this occupation as 7 < 8. An SVP rating of 7 to less than ("<") 8 indicates that the occupation requires "over 2 years up to and including 4 years" of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.¹⁰

employer to other employees with similar experience and qualifications who are performing the same services. See *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

⁸ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://fledatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.*

⁹ For additional information regarding the occupational category, see Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Reporters, Correspondents, and Broadcast News Analysts (2016-17 ed.).

¹⁰ For additional information, see the O*NET Help webpage at <http://www.onetonline.org/help/online/svp>.

Further, the summary report provides the educational requirements of “respondents,” but does not account for 100% of the “respondents.” The respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty.

The Petitioner also submits information printed from several websites for our consideration under this criterion, including [REDACTED] an individual’s personal blog, and another printout whose source is not clear. Though we reviewed all of these resources, we do not find them persuasive because they do not state that a bachelor’s degree in a specific specialty, or the equivalent, is normally required.

On appeal, the Petitioner submits two position evaluations from [REDACTED] of [REDACTED] and [REDACTED] of [REDACTED] concludes that the proffered position requires a bachelor’s degree in communications, journalism, language or literature, or a related area. [REDACTED] concludes that the Petitioner’s stated education requirement “is reasonable and commensurate with the duties required for the position.” We carefully reviewed both letters but, for the following reasons, determined that they are not persuasive.

For example, the letters do not adequately demonstrate their knowledge of the proffered position and the Petitioner’s operations. Both authors generally discuss the Petitioner’s business operations without meaningful detail. Their description of the job duties consists of the same bullet-pointed duties contained in the Petitioner’s support letter. The record does not indicate that they visited the Petitioner’s premises or spoke to anyone affiliated with the Petitioner so as to ascertain, and base their opinions upon, the substantive nature and educational requirements of the proposed duties as they would be actually performed.

In addition, we observe that neither individual references the Petitioner’s Level I wage-level designation. Instead, [REDACTED] claims that the “nature of these specific responsibilities and knowledge is so specialized and complex” and that “the success of [the Petitioner] is largely dependent on the ability and expertise of a Reporter . . . as the specialized duties of this individual directly and indirectly affect the company’s operations, revenues and profits, and ultimately the overall success of the company.” Likewise, [REDACTED] also claims that the proffered duties are “highly specialized and complex.” However, the record does not indicate whether [REDACTED] and [REDACTED] were aware that, as indicated by the Level I wage on the LCA, the Petitioner considered the proffered position to be an entry-level reporter position for a beginning employee who has only a basic understanding of the occupation. In other words, the Petitioner has not demonstrated that they possessed the requisite information to adequately assess the nature of the position.

Considered collectively, we find that these shortcomings indicate an incomplete review of the position. We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or

may give less weight to that evidence. *Id.* We find that these evaluations do not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and, for the sake of efficiency, hereby incorporate this finding into our analysis of the remaining specialty-occupation criteria.

Finally, the Petitioner's requirements do not indicate that a bachelor's degree in a specific specialty is normally the minimum requirement for entry into the particular position. The Petitioner claims that the position requires a bachelor's degree, and preferably a master's degree, in communications, journalism, mass media, language/literature, teaching or another area related to written communications.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).¹¹

Not only it is not readily apparent that all of the listed fields of study are closely related, but the Petitioner has not established that, for example, a degree in literature or any unspecified language is directly related to the duties and responsibilities of the particular position proffered in this matter or how dissimilar fields, such as mass media and teaching, form a body of highly specialized knowledge or a specific specialty. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, under the Petitioner's own standards.

For all of these reasons, we find that the evidence of record does not support a finding that the particular position proffered here, an entry-level position located within the "Reporters and Correspondents" occupational category, would normally have such a minimum specialty degree requirement, or the equivalent. The Petitioner therefore has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

¹¹ In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

B. Second Criterion

The second criterion presents two alternative prongs: “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[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry establish 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) (considering these “factors” to inform the commonality of a degree requirement)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement.

Though [REDACTED] and [REDACTED] both indicate that the Petitioner’s claimed degree requirement is consistent with common hiring practices and standards in the Petitioner’s industry, the record does not contain sufficient evidence to support this statement. Particularly when considered in combination with the shortcomings in these letters discussed above, we find this assertion insufficient to satisfy this prong.

The record also contains several individuals’ profiles that the Petitioner printed from LinkedIn. However, this information does not satisfy the first prong, either. First, we observe that these profiles constitute claims made by these individuals regarding their educational credentials, rather than evidence to support the claims. A petitioner’s unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Chawathe*, 25 I&N Dec. at 376. In addition, the record does not establish that any of these individuals occupy the type of Level I, entry-

level position proffered here. Nor does the record establish that attainment of a bachelor's degree in a specific specialty, or the equivalent, was a precondition to any of these individuals' hiring.

The Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

We discussed findings of the *Handbook* and O*NET regarding the occupational category into which the Petitioner placed the proffered position. Again, neither resource indicates that a bachelor's degree in a specific specialty, or the equivalent, is normally required.

The Petitioner references its standing within its industry and community repeatedly, and we acknowledge the Petitioner's claims that the knowledge and associated entry requirements associated with the proffered position exceed those of other positions located within the occupational category. For example, the Petitioner claims that the position "requires higher level writing and editing skills compared against other reporter positions," that the "position's duties are more specialized and complex than a typical reporter position" and "require more professional judgment and discretion," and emphasizes that the Beneficiary will be required to "independently develop[] news contents [*sic*] with limited guidance from the newspaper's editors." The Petitioner also submits work product it claims was prepared by the Beneficiary for our consideration under this criterion.

Though we have considered these statements and the evidence submitted in their support, we find that the Petitioner's Level I wage designation undercuts its claim that it satisfies this criterion.¹² This designation, when read in combination with the Petitioner's job description and the *Handbook's* account of the requirements for this occupation, further suggests that this particular position is not so complex or unique relative to other reporters that the duties can only be performed by an individual with a bachelor's degree or higher in a specific specialty, or its equivalent. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not

¹² The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage-level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

demonstrated how an established curriculum of courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. In other words, if typical positions located within the occupational category do not require a bachelor's degree in a specific specialty, or the equivalent, then it is unclear how a position with the Level I characteristics described above would, regardless of the Petitioner's assertions regarding the complexity of its operations or the duties of the proffered position.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references her qualifications repeatedly. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not adequately describe tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. The record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates, but is necessitated by performance requirements of the position. *See Defensor*, 201 F.3d at 387-88. If we were solely limited to reviewing the Petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement. *Id.* Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

Though the Petitioner-provided information regarding educational credentials for some of its other employees, the record is insufficient to establish that these individuals hold the same position proffered here – an entry-level position with the Level I characteristics discussed above. For example, we observe that the quarterly tax returns submitted by the Petitioner indicate that most of these employees earn a higher wage – some as much as 40% higher – than the wage offered to the Beneficiary. Therefore, we are unable to conclude that these individuals are employed in the same or similar positions. In addition, we observe that the Petitioner's listing of these individuals' credentials, which include degrees in fields such as education, economic management, history, and engineering, indicates that a degree in a wide spectrum of fields would adequately prepare an individual to perform the duties of this position.

Without more, the Petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, it has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

While the Petitioner provided a more detailed job description on appeal, the description does not establish that the duties are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We acknowledge the Petitioner's assertions regarding the specialization and complexity of the position's duties. However, as discussed above, those claims are undermined by the Petitioner's Level I wage designation.¹³ Without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position within this occupational category would likely be classified at a higher-level, requiring a substantially higher prevailing wage.¹⁴

Although the Petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Thus, the Petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

IV. LCA

Further, the Petitioner has not submitted an LCA that corresponds to the position. The Petitioner's repeated assertions that the proffered position requires more "professional judgment and discretion" than a typical reporter, is "much more complex and specialized than . . . typical reporter duties as described in" the *Handbook*, and must "independently develop[] news content[] with limited guidance from the newspaper's editors," combined with the need to "write and edit the articles in Chinese," are not reflected in the wage level chosen on the LCA.

As noted, the Petitioner designated the proffered position at a Level I wage. The DOL guidance states that a Level I (entry-level) wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation and should be

¹³ Again, the Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*.

¹⁴ For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage. For additional information regarding wage levels as defined by DOL, 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.

considered for research fellows, workers in training, or internships.¹⁵ The DOL guidance indicates that a petitioner must distinguish its proffered position from others within the occupation through the proper wage level designation to indicate factors such as complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. Through the wage level, the Petitioner reflects the job requirements, experience, education, special skills/other requirements and supervisory duties. A language requirement other than English in a job offer generally is considered a special skill for all occupations (with the exception of Foreign Language Teachers and Instructors, Interpreters, and Caption Writers).

While DOL is the agency that certifies LCA applications before they are submitted to U.S. Citizenship and Immigration Services (USCIS), DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL-certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that we ensure that an LCA actually supports the H-1B petition filed on behalf of the Beneficiary. Here, the Petitioner has not submitted a certified LCA that accurately reflects the Petitioner's statements that the position has a more specialized and complex nature and requires a higher level of professional judgment and discretion than a typical reporter as described in the *Handbook*, along with the need for proficiency in the Chinese language. As a result, even if it were determined that the proffered position qualifies as a specialty occupation, the petition could not be approved because the record lacks an LCA which corresponds to the proper wage level.¹⁶

¹⁵ *Id.*

¹⁶ To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A), by allowing that petitioner to submit an LCA for a lower prevailing wage than the one being petitioned for. The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). *See* Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-56) (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL].").

V. PRIOR APPROVALS

The Petitioner submits copies of unpublished AAO decisions in which we determined that the positions proffered in those matters qualified as a specialty occupation. However, these decisions were not published as precedent and therefore do not bind officers in future adjudications. *See* 8 C.F.R. § 103.3(c).¹⁷ Non-precedent decisions apply existing law and policy to specific facts of individual cases, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Furthermore, any suggestion that we must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be a shift in the evidentiary burden in these proceedings from the Petitioner to the agency, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361.

Moreover, the Petitioner claims that it has received H-1B approval for similar petitions in the past, and submits copies of the approval notices for our review. The Director's decision does not indicate whether she reviewed the prior approvals of the other nonimmigrant petitions. However, a prior approval does not compel the approval of a subsequent petition or relieve the Petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 Fed. Reg. 2,606, 2,612 (Jan. 26, 1990) (to be codified at 8 C.F.R. pt. 214). 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 Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

VI. CONCLUSION

We find that the Petitioner has not (1) established that the proffered position is a specialty occupation, and (2) submitted a certified LCA that corresponds to the petition.¹⁸

ORDER: The appeal is dismissed.

Cite as *Matter of P-C-E-, Inc.*, ID# 482723 (AAO Aug. 14, 2017)

¹⁷ Thus, contrary to the Petitioner's assertion, these decisions are not subject to the legal doctrine of *stare decisis*.

¹⁸ Because this issue precludes approval of the petition we will not address any of the additional issues we have observed in our *de novo* review of this matter.