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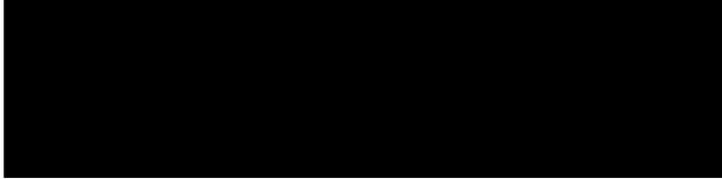
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: WAC 08 245 50979 Office: CALIFORNIA SERVICE CENTER Date: APR 02 2010

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: This is the decision 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).

Perry Rhew
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.

The petitioner is a software solution development company. It seeks to employ the beneficiary as a programmer analyst and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation.

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

In the petition, filed on September 15, 2008, the petitioner stated that it has more than 150 employees and a gross annual income of \$23,265,526. The petitioner indicated that it wished to continue to employ the beneficiary as a programmer analyst from September 11, 2008 through January 22, 2010 at an annual salary of \$70,000.

The support letter states that the beneficiary will be responsible for system and requirement study, design analysis, prototype design, system integration and administration, and development and implementation of business logic and rules. Specifically, the beneficiary would be responsible for:

[t]he development, implementation and support of our real-time embedded enterprise infrastructure, software and middleware technologies, and web-enhanced features, specifically for database, data warehousing and data integration functionalities using Open source environment, Oracle 10g/9i, SQL Server, Business Objects, OLAP, LDAP, Web Intelligence, Web Sphere, SQL Cube, and Informatica (Power Center/Power Mart) for UNIX, Solaris and LINUX operating platforms. [The beneficiary] will be responsible for overseeing all technical issues surfacing from new enhancements related to Business Intelligence, LDAP and Business Objects requirements, handling escalated technical support issues for our existing customers, documenting technical bugs and technical issues, designing and developing technical support documentation and procedures for supporting our new real-time embedded software and web-based/e-business program coding to ensure that the functionality of the Enterprise infrastructure is seamless and transparent to the end users. He will work with our Programmers to customize the design and development of database upload features and data warehousing applications using Oracle 10g/9i/SQL Server data warehousing technology and interconnectivity technology including web-based and web-enhanced technology, and designing and developing data mining and data mapping application. [The beneficiary] will also develop automation scripts for testing and running reports using VB Script and Java Script, develop data

analysis model and coding using ETL process, and conduct database tuning, data mining and database mapping. [The beneficiary] will also develop pre and post implementation support procedures, provide such database administration support functions as developing stress, volume and integration testing, quality assurance procedures, and appropriate applications to store, back-up and recover data as required from the database and data warehousing application. [The beneficiary] will also design and develop database trigger, stored procedures, views and functions using PL/SQL, SQL, and C/C++, design and develop GUI applications using Rational Rose and Visual Basic, design and develop version control applications using CVS, CSS, Rational Clear Case, and design, develop and implement business rules, data access and business logic, including database schema, use cases, sequences, scenarios and models, business objects and business connectors for data sources using UML, XML, LDAP, OLAP, Business Objects, Web Intelligence, and Object Oriented Methodology to ensure that the Web Services solutions follow the program and design specifications.

The petitioner indicates that 50% of the beneficiary's time will be spent in program writing, coding and development, while 20% of his time will be spent on study and analysis of system program and design specifications, 20% of his time spent on developing support procedures, and 10% of his time spent on debugging. The petitioner states that the proffered position requires a minimum of a bachelor's degree, but does not state that the degree must be in a specific specialty.

The Form I-129 indicates that the beneficiary will work at the petitioner's offices in Fremont, CA. The submitted Labor Condition Application (LCA) was filed for a programmer analyst to work in Fremont, CA from September 11, 2008 to January 22, 2010. The LCA lists a prevailing wage of \$55,661 for Fremont, CA.

The petitioner submitted the beneficiary's education documents, resume, and reference letters, indicating that he has a foreign degree and experience. No credential evaluation was submitted with the petition.

On September 17, 2008, the director issued an RFE requesting additional evidence to establish that the proffered position is a specialty occupation. The petitioner was advised to submit, in part, an organizational chart as well as copies of contracts, statements of work, work orders, and service agreements between the petitioner and its clients. The petitioner was also advised to submit additional documentation pertaining to the petitioner's business as well as the beneficiary's status.

The documentation provided by the petitioner in response to the RFE includes a Master Software Development Services Agreement (hereinafter "Agreement") between the petitioner and a company called Pacific Data Centers. The petitioner also provided a Master Statement of Work (SOW) and a Purchase Order for the beneficiary's services.

The Agreement is dated April 14, 2008 and states that the petitioner "[i]s in the business of providing Software Development services and solutions (collectively, "Services") using its Software Toolkits and skilled Professionals in the United States of America, in India, and in other countries throughout the world." The Agreement does not provide for an exact termination date, but states that it will terminate automatically

on the successful completion of all SOWs.

The SOW, which is also effective as of April 14, 2008, provides that the petitioner will deliver the following Work Product to Pacific Data Centers:

Complete database design, data architecture and Metadata for PDC conversion services and asset management database. Data Marts built using Business Objects, Reports and digital dashboards on Business Objects as per customer requests (details and scope after 2 weeks of analysis onsite).

Proprietary SOA based Components built using Java, J2EE, EJB, Spring, Hibernate and other open source software for their ETL Tools, ERP Applications, business processes, rules, workflows as well as data components. Intellectual property built using these proprietary tools will remain property of [the petitioner].

The SOW also provides that the scope of the Work Product is as follows:

Initial Scope will be detailed analysis and design of the new system being built. Analysis will be carried out by Systems Analyst and Senior programmer Analyst from our Fremont office *with travel to customer site once every two weeks.*

Once the scope of the work is defined, the senior programmer Analyst[s] will be working and coordinating with our offshore team comprising of programmers and analyst[s] as well as testers in Pune, India. . . .

[Emphasis added.] The project is described in the SOW as being carried out in five major phases. The first phase for analysis/design will start in April 2008 and be completed in May 2008. The second phase is for application development and will start in May 2008 with final completion in August 2010. The third phase for database/data mart development starts in June 2008 with final completion in December 2010. The fourth phase is for SOA tools deployment, which begins in July 2008 and is ongoing. The final testing phase starts in December 2008 and is ongoing. The SOW indicates that the petitioner will provide programmer analysts at all phases of development. Additionally, the SOW states that all work will be performed either at the petitioner's offices in Fremont, CA or in Pune, India.

The paperwork provided in response to the RFE also includes an additional detailed SOW, which names the beneficiary and was signed by both the petitioner and Pacific Data Centers on April 14, 2008. The description of the beneficiary's proffered duties in the detailed SOW does not conflict with that provided by the petitioner in the initial support letter. However, the detailed SOW provides as follows with respect to the location where the beneficiary would work:

Work can be conducted either at [the petitioner's] site in Fremont, CA or offshore at Pune, INDIA *with regular bi-weekly visits to client site at Arizona Or Seattle[.]*

[Emphasis added]. Therefore, the beneficiary would travel to work at the client site in Arizona or Seattle biweekly (for unspecified periods of time) in contradiction to the LCA and the Form I-129, both of which indicate that the beneficiary would only work at the petitioner's offices in Fremont, CA. 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 also submitted an organizational chart, which shows that the beneficiary will work under a DW/BI Senior Delivery Manager along with two other programmer analysts.

The director denied the petition on November 3, 2008. On appeal, counsel attempts to clarify the beneficiary's work location by providing a letter from the petitioner dated December 4, 2008. Although the beneficiary's name is referenced at the top of the letter, the letter actually states that a different employee, not the beneficiary, will be employed at the petitioner's facility in Fremont, CA as a full-time employee for 40 hours a week. The letter does not provide where the beneficiary will work. Therefore, the letter is not probative for these proceedings.

On appeal, counsel also submits a copy of the employment agreement between the petitioner and the beneficiary, which was made effective as of August 17, 2005. The agreement does not clarify the location of employment.

Counsel argues that the proffered position is a specialty occupation as the petitioner will provide direct services to its client and as the proffered duties are highly specialized and complex. The AAO acknowledges that the petitioner is not a contractor as the petitioner is a software development and management firm that, with regard to the beneficiary in this matter, will more likely than not provide direct computer programming services to its client as opposed to simply outsourcing the personnel in question. However, the petitioner has not demonstrated that the proffered position is a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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

Specialty occupation means 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, 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, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary and sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or a particular position is so complex or unique that it can be performed only by an individual

with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Upon review, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty-occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The Programmer Analyst occupational category is encompassed in two sections of the *Handbook* (2010-11 online edition) – "Computer Software Engineers and Computer Programmers" and "Computer Systems Analysts."

The Computer Software Engineers and Computer Programmers section describes computer programmers as follows:

[C]omputer programmers write programs. After computer software engineers and systems analysts design software programs, the programmer converts that design into a logical series of instructions that the computer can follow (A section on computer systems analysts appears elsewhere in the Handbook.). The programmer codes these instructions in any of a number of programming languages, depending on the need. The most common languages are C++ and Python.

Computer programmers also update, repair, modify, and expand existing programs. Some, especially those working on large projects that involve many programmers, use computer-assisted software engineering (CASE) tools to automate much of the coding process. These tools enable a programmer to concentrate on writing the unique parts of a program. Programmers working on smaller projects often use "programmer environments," applications that increase productivity by combining compiling, code walk-through, code generation, test data generation, and debugging functions. Programmers also use libraries of basic code that can be modified or customized for a specific application. This approach yields more reliable and consistent programs and increases programmers' productivity by eliminating some routine steps.

As software design has continued to advance, and some programming functions have become automated, programmers have begun to assume some of the responsibilities that were once performed only by software engineers. As a result, some computer

programmers now assist software engineers in identifying user needs and designing certain parts of computer programs, as well as other functions. . . .

* * *

[M]any programmers require a bachelor's degree, but a 2-year degree or certificate may be adequate for some positions. Some computer programmers hold a college degree in computer science, mathematics, or information systems, whereas others have taken special courses in computer programming to supplement their degree in a field such as accounting, finance, or another area of business. . . .

The *Handbook's* section on computer systems analysts reads, in pertinent part:

In some organizations, programmer-analysts design and update the software that runs a computer. They also create custom applications tailored to their organization's tasks. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas. (A separate section on computer software engineers and computer programmers appears elsewhere in the Handbook.) As this dual proficiency becomes more common, analysts are increasingly working with databases, object-oriented programming languages, client-server applications, and multimedia and Internet technology.

* * *

[W]hen hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with graduate degrees are preferred. For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.

Despite the preference for technical degrees, however, people who have degrees in other areas may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation. . . .

Therefore, the *Handbook's* information on educational requirements in the programmer-analyst occupation indicates that a bachelor's or higher degree, or the equivalent, in a specific specialty is not a normal minimum entry requirement for this occupational category. Rather, the occupation accommodates a wide spectrum of educational credentials.

As evident above, the information in the *Handbook* does not indicate that programmer-analyst positions normally require at least a bachelor's degree in a specific specialty. While the *Handbook* indicates that a bachelor's degree level of education in a specific specialty may be preferred for particular positions, the evidence of record on the particular position here proffered does not demonstrate requirements for the theoretical and practical application of such a level of highly specialized computer-related knowledge.

Moreover, the record's descriptions of the petitioner's duties do not elevate the proffered position above that of a programmer analyst for which no particular educational requirements are demonstrated. As stated previously, 50% of the beneficiary's time would be spent in program writing, coding and development, with the rest of his time divided between studying system program and design specifications, developing support procedures, and debugging. The AAO rejects as unsubstantiated the petitioner's declaration that the proffered position requires an individual with a bachelor's degree. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, as discussed above, the petitioner did not state it requires a bachelor's degree in a specific specialty for the proffered position.

As the evidence of record does not indicate that this petition's particular position is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (a) parallel to the proffered position and (b) located in organizations that are similar to the petitioner.

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS include: 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 attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not develop relative complexity or uniqueness as an aspect of the position.

Next, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty. The petitioner did not provide any information about the credentials of its other programmer analysts.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence of record would indicate no specialization and complexity beyond that of a programmer-analyst, and as reflected in this decision's discussion of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the *Handbook* does not indicate that the attainment of at least a bachelor's degree in a specific specialty is usually associated with programmer analysts in general.

For the reasons discussed above, the AAO finds that the petitioner has not established that the proffered position qualifies as a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO therefore affirms the director's finding that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation and denies the petition for this reason.

Beyond the decision of the director, the AAO also finds that the petitioner failed to establish that the LCA corresponds to the petition by encompassing all of the work locations and related wage requirements for the beneficiary's full employment period. For this additional reason, the petition cannot be approved.

In pertinent part, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B) states:

The petitioner shall submit the following with an H-1B petition involving a specialty occupation: (1) A certification from the Secretary of Labor that the petitioner has filed a labor condition application

The regulation at 8 C.F.R. § 103.2(b)(1) states, in pertinent part:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions.

In addition, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1), states, as part of the general requirements for petitions involving a specialty occupation, that:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

Further, the regulation at 8 C.F.R. § 214.2(h)(2)(E), which states:

Amended or new petition. The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H-1C, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination. In the case of an H-1B petition, this requirement includes a new labor condition application.

It is self-evident that a change in the location of a beneficiary's work to a geographical area not covered by the LCA filed with the Form I-129 is a material change in the terms and conditions of employment. Because work location is critical to the petitioner's wage rate obligations, the change deprives the petition of an LCA supporting the period of work to be performed at the new location.

Moreover, while DOL is the agency that certifies LCA applications before they are submitted to 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:

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 of H-1B visa classification.*

[Italics added].

The LCA and Form I-129 in this matter, which indicate the proffered position's location as being at the petitioner's offices in Fremont, CA, do not correspond with the detailed SOW provided by the petitioner in response to the RFE, which indicates that the beneficiary will travel biweekly to the client's location in either Arizona or Seattle. In light of the fact that the record of proceeding indicates that the beneficiary will likely work at locations not identified in the Form I-129 and the LCA filed with it, USCIS cannot ascertain that this LCA actually supports the H-1B petition. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Also beyond the decision of the director, the AAO finds that the petition must be denied for the additional reason that it was filed without an itinerary of the dates and locations where the beneficiary would work, as required by the regulation at 8 C.F.R. § 214.2(h)(2)(i)(B), which states, in pertinent part:

Service or training in more than one location. A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The

address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.

The language of the regulation, which appears under the subheading "Filing of petitions" and uses the mandatory "must," indicates that an itinerary is material and required initial evidence for a petition involving employment at multiple locations, and that such a petition may not be approved for any employment for which there is not submitted, at the time of the petition's filing, at least the employment dates and locations. USCIS may in its discretion deny an application or petition for lack of initial evidence. 8 C.F.R. § 103.2(b)(8)(ii). The AAO hereby exercises that discretion and denies the petition for this additional reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit an education evaluation as required for a foreign degree or other sufficient documentation to show that the beneficiary qualifies to perform services in a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C). As such, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

Finally, the AAO notes that the record indicates that prior H-1B petitions have been approved for the beneficiary. The director's decision does not indicate whether she reviewed the prior approvals of the other nonimmigrant petitions. However, 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. If any of the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, it 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 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). 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. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). 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 nonimmigrant petitions on behalf of a 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).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The appeal will be dismissed and the petition denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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