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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

Dr



FILE: EAC 08 118 51513 Office: VERMONT SERVICE CENTER Date: **AUG 05 2010**

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 design and development, IT consulting company. It seeks to employ the beneficiary as a systems 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 on the following grounds: (1) the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation; (2) the petitioner failed to submit a credible itinerary; and (3) the petitioner failed to establish that the U.S. Department of Labor's Form ETA 9035E Labor Condition Application (LCA) corresponds to the petition.

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 with the petitioner's brief and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In the petition submitted on March 19, 2008, the petitioner stated it has 125 employees and a gross annual income of \$10 million. The petitioner indicated that it wished to employ the beneficiary as a systems analyst from September 1, 2008 to February 7, 2010 at an annual salary of \$65,000.

The support letter states that the person in the proffered position will be responsible for performing the following duties:

- Gather business requirements to identify, create, and analyze a business requirement document;
- Develop detailed technical requirements and specifications, programming and coding, test and validate program solving engineering problems, perform quality assurance, and perform software and data migration and integration throughout Software Development Life Cycle;
- Analysis, design, development, testing, implementation, administration and support of various client server and web-based business applications and database systems; and
- Utilize team work and participate in all aspects of project performance, exercise personal judgment and analytical skills utilizing technologies, languages, and tools, including PeopleSoft, PeopleTools, Application Engine, PS Query, NVision, QTP, PeopleCode, SQR, and SCM and FI Module on Windows and Unix platforms.

The petitioner states that the proffered position requires someone with at least a bachelor's degree in computer science, math, engineering, MIS or a related field.

The Form I-129 states that the beneficiary will work at an address that is not the petitioner's office in Jersey City, NJ. The submitted Labor Condition Application (LCA) was filed for a systems analyst to work in Jersey City, NJ from September 1, 2008 to August 31, 2011. The LCA lists a prevailing wage of \$56,014 for

Jersey City, NJ.

The petitioner submitted the beneficiary's credentials, indicating that his foreign education is equivalent to a U.S. Bachelor of Science degree in Electronics Engineering.

In order to demonstrate that the beneficiary is eligible to extend his stay in H-1B status beyond the maximum six years of authorized admission permitted under Section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), the petitioner submitted a copy of the certified labor certification application the petitioner filed on behalf of the beneficiary, with a priority date of August 28, 2006. The AAO acknowledges that the labor certification application is for a future position that may not necessarily be the same as the one proffered in the H-1B petition, however the AAO finds it interesting that the petitioner describes the beneficiary's position in the labor certification application as "[w]orking simultaneously on multiple projects for various clients and working on complex systems/appl., *freq. travels domestically to clients/project sites nationwide required.*" [Emphasis added.]

On February 19, 2009, the director issued an RFE. The petitioner was instructed to submit a more detailed job description, copies of any written contracts or summary of oral contracts between the petitioner and beneficiary, as well as copies of any end-user contracts detailing the beneficiary's proposed employment, letters from the clients where the beneficiary will be working, and information about where the beneficiary will work and who he will report to day-to-day. Additionally, the RFE stated that if the beneficiary will work on in-house projects, the petitioner should submit evidence regarding those projects. The RFE also requested that the petitioner provide evidence regarding its business and other workers.

In response to the RFE, the petitioner wrote as follows: "The beneficiary is currently performing services for Harden/Girling Health Care ("HGHC") at [REDACTED]."

The petitioner also stated:

At the time of filing for an extension, [the beneficiary] was working at Lehman Brothers through our client, Expertus, in Jersey City, NJ. . . . Since then, Lehman has filed for bankruptcy in 2008. After [the beneficiary] found out in September 2008 that his contract would be terminated in November of 2008, [the beneficiary] made plans to go to India on an unpaid leave of absence to get married and honeymoon. The Beneficiary returned in Feb. 2009 to start a new project at HGHC in Austin, Texas. . . .

The petitioner submitted a new LCA for a Systems Analyst to work in Austin, TX, with a prevailing wage of \$44,117. The new LCA was certified after the petition was filed, on February 20, 2009.

In addition, the petitioner submitted a copy of a Vendor Agreement between itself and a company in McLean, VA, called Cordinet Inc. The agreement was signed on February 23, 2009, also after the date the petition was filed, and states it will be effective for two years. The petitioner also submitted a Statement of Work (SOW) that was issued on February 23, 2009, pursuant to the Vendor Agreement. The SOW states that the beneficiary will provide services for HGHC in Austin, TX as a PeopleSoft Consultant/Production Support.

The length of the assignment is listed “TBD.”

The petitioner also included a letter from Cordinet Inc., dated February 26, 2009, which provides that the beneficiary will: analyze the application requirement; design and develop PeopleSoft Fin 9.0 applications; Conduct studies pertaining to development of new information systems; Create database level adhoc reports; Modify and design various reports; and Test, implement and support functionalities. Cordinet does not provide detailed information about the project for HGHC and no documentation from HGHC is provided. Cordinet also states, “[o]ur minimum requirements for this position is a Bachelor Degree in Computer Science, Electrical and Electronics, Mathematics, Engineering, MIS or a related field,” which is slightly different from the minimum requirements stated by the petitioner in the support letter.

It is apparent that in response to the RFE the petitioner attempted to change the proffered position as stated in the petition. The initial petition described the proffered position as a systems analyst who would work for an unspecified third party client in Jersey City, NJ on a project focusing on gathering business requirements that required at least a bachelor’s degree in computer science, math, engineering, MIS or a related field. In response to the RFE, the petitioner tried to change the proffered position to a PeopleSoft Consultant/Production Support person working for a third-party client in Austin, TX requiring at least a bachelor’s degree adding electrical and electronics to the list of acceptable fields, and submitted contracts that were dated and an LCA that was certified after the petition was filed. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition, which is based on a contract that the petitioner stated was terminated.

The director denied the petition on May 14, 2009.

The AAO will first consider whether the proffered position is a specialty occupation. Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as 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 at 387. 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), 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.

On appeal, the petitioner argues that *Defensor v. Meissner*, 201 F.3d 384, is not applicable to this petition because the position at issue in *Defensor*, a nurse, is non-professional, whereas a systems analyst, it claims, is

a professional occupation. However, the application of *Defensor* is not determined by whether the proffered position is professional. Instead, an analysis of whether the proffered position is a specialty occupation under *Defensor* is appropriate whenever the petitioner intends to have the beneficiary perform work for another entity.

The AAO notes that, as recognized by the court in *Defensor v. Meissner*, 201 F.3d at 387, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 387-388. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. As discussed above, the record of proceedings lacks such substantive evidence from any end-user entities that may generate work for the beneficiary and whose business needs would ultimately determine what the beneficiary would actually do on a day-to-day basis. In fact, the petitioner stated that the contract on which the position as described at the time of filing was based was terminated as of November 2008. Moreover, the petitioner never provided any documentation from Lehman and only submitted a copy of a contract it had with a company called Expertus. In short, the petitioner has failed to establish the existence of H-1B caliber work for the beneficiary.

As discussed above, the evidence indicates that, despite the petitioner's statement in the Form I-129 that the beneficiary would work in Jersey City, NJ, after the petition was filed, the beneficiary was assigned to a different project for a different third-party client in Austin, TX. As discussed previously, the AAO will not consider the documentation provided in response to the RFE regarding the position in Austin, TX. Regardless, the AAO notes that the petitioner did not provide copies of any documentation from HGHC or the contract between HGHC and Cordinet, Inc.

Under *Defensor v. Meissner*, 201 F.3d at 387, the failure to provide copies of contracts establishing the substantive nature of the work to be performed by the beneficiary precludes a 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 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's 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.

As the record does not contain sufficient evidence of the specific duties the beneficiary would perform for the petitioner's client(s), the AAO cannot analyze whether his placement is related to the provision of a product or service that requires the performance of the duties of a systems analyst. Applying the analysis established by the Court in *Defensor*, which is appropriate in an H-1B context, like this one, where USCIS has determined that the petitioner is not the only relevant employer for which the beneficiary will provide services, USCIS

has found that the record does not contain sufficient documentation from the end user client(s) for which the beneficiary will provide services that establishes the specific duties the beneficiary would perform. Without this information, the AAO cannot analyze whether these duties would require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation.

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.

Second, the AAO affirms the director's finding that the petitioner failed to submit an itinerary, as required under 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).

On appeal, the petitioner cites to a [REDACTED] internal memorandum to support his assertion that the itinerary requirement can be met by virtue of the petitioner being a compliant company that is a bona fide employer. See INS Central Office Memorandum from [REDACTED] Assistant Commissioner, INS Office of Adjudications, *Interpretation of the Term "Itinerary" Found in 8 C.F.R. 214.2(h)(2)(i)(B) as it Relates to the H-1B Nonimmigrant Classification*, HQ 70/6.2.8 (December 29, 1995) (hereinafter Aytes memo).

With respect to the Aytes memo, unpublished and internal opinions can not be cited as legal authority and they are not precedent or binding on USCIS as a matter of law. See 8 C.F.R. § 103.3(c) (types of decisions that are precedent decisions binding on all USCIS officers). Courts have consistently supported this position. See *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (holding that legacy Immigration and Naturalization Serviced (INS) memoranda merely articulate internal guidelines for the agency's personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely"); see also *Noel v. Chapman*, 508 F.2d 1023 (2nd Cir. 1975) (finding that policy memoranda to legacy INS district directors regarding voluntary extended departure determinations to be "general statements of policy"); *Prokopenko v. Ashcroft*, 372 F.3d 941, 944 (8th Cir. 2004) (describing a legacy INS Operating Policies and Procedures Memorandum (OPPM) as an "internal agency memorandum," "doubtful" of conferring substantive legal benefits upon aliens or binding the INS); *Romeiro de Silva v. Smith*, 773 F.2d 1021, 1025 (9th Cir. 1985) (describing an INS Operations Instruction (OI) as an "internal directive not having the force and effect of

law”). Regardless, the Aytes memo qualifies its guidance as being subject to the exercise of the adjudicating officer’s discretion. This is evident in the memo’s statements that the itinerary requirement has been met “[a]s long as the officer is convinced of the bona fides of the petitioner’s intentions with respect to the alien’s employment,” and that “[s]ervice officers are encouraged to use discretion in determining whether the petitioner has met the burden of establishing that it has an actual employment opportunity for the alien.”

In addition, the Aytes memo was written to provide guidance to USCIS in situations where the documentation submitted by the petitioner indicates that the petitioner is the actual employer and not a contractor or agent. Regardless, the Aytes memo must not be interpreted as countermanding or contradicting the regulations authorizing USCIS to request additional documentation. Under 8 C.F.R. § 103.2(b)(8)(ii), “if all required initial evidence is not submitted with the application or petition *or does not demonstrate eligibility*, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified time as determined by USCIS.” (Emphasis added). Title 8 C.F.R. § 214.2(h)(9)(i) also states, “The director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist his or her adjudication.”

Therefore, under the regulations, USCIS has broad discretionary authority to require additional documentation, especially in a case, like this, where the petitioner has not demonstrated eligibility at the time of filing the petition or where it is needed for a material line of inquiry. The fact that the petitioner’s business is established is not sufficient in and of itself to demonstrate a bona fide offer of employment. In a situation where the beneficiary is likely to be contracted out to a third party worksite, the petitioner must provide detailed evidence with respect to the contractual relationship between the petitioner, its clients, and any other third party end users, in order to establish what the beneficiary will actually do and which entity will actually control the work to be performed by the beneficiary. Such documentation was not provided. As discussed above, the petitioner is a contractor and intends to assign the beneficiary to work at third-party client site(s). The petitioner did not demonstrate that it will employ the beneficiary at one location for the duration of the petition. The AAO therefore affirms the director’s denial of the petition for this additional reason.

Third, the AAO also affirms the director’s finding that the petitioner failed to establish that the LCA corresponds to the petition. 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.*

[Emphasis added].

The Form I-129 and LCA in this matter, which indicate the proffered position's location as being in Jersey City, NJ, are no longer valid as the petitioner stated that the contract on which the Jersey City, NJ work was based was terminated and, moreover, the petitioner never submitted documentation from Lehman, where the beneficiary was allegedly being assigned. Further, the petitioner stated in response to the RFE that it intends to assign the beneficiary to a different third-party client in Austin, TX and submitted a new LCA, which cannot be considered on appeal as it was certified after the petition was filed. In light of the fact that the record of proceeding indicates that the beneficiary will work at locations not identified in the Form I-129 and the LCA filed with it, the initial LCA does not support and correspond to the H-1B petition. *See id.* As discussed above, 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.

Therefore, the director's conclusion 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 is affirmed.

Beyond the decision of the director, the AAO finds that the petitioner failed to submit requested evidence, thereby precluding a material line of inquiry. As discussed earlier, the petitioner did not provide additional documentation that was specifically requested by the director, such as an itinerary, copies of any agreements between the petitioner and beneficiary, and copies of end user contracts, to provide further information that clarifies whether the proffered position is a specialty occupation, even though the evidence indicates that the beneficiary is not likely to be employed at the petitioner's offices for the duration of the petition. As stated earlier, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Therefore, the petition will be denied for this additional reason.

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 he 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. 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). 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).

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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.

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