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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**

D2



FILE: EAC 08 077 51364 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 network graphic designer and to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition 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 January 18, 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 network graphic designer from March 29, 2008 to March 28, 2011 at an annual salary of \$38,189.

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

- Design, develop, create and test network systems, applications, websites and other online graphic images;
- Create and edit computer graphics, computer animation and web pages, e-cards and banners and other multimedia designs/tools using computer languages and technologies.

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

The Form I-129 states that the beneficiary will work at the petitioner's offices in Jersey City, NJ. The submitted Labor Condition Application (LCA) was filed for a network graphic designer to work in Jersey City, NJ from March 29, 2008 to March 28, 2011. The LCA lists a prevailing wage of \$38,189 for Jersey City, NJ.

The petitioner submitted the beneficiary's credentials, indicating that she has a U.S. Bachelor of Science degree in Multimedia and Web Design.

On February 25, 2008, the director issued an RFE. The petitioner was instructed to submit a more detailed job description as well as a "detailed itinerary of the work sites the beneficiary is to be assigned to, to include

specific dates, locations, and clients that the beneficiary will be servicing. Also provide a copy of the contract with the end user which specifically mentions the beneficiary and the duties he will perform with that end user.” The petitioner was told that it must establish what work will be performed by the beneficiary and where the beneficiary will work. The RFE also stated, “[i]f the beneficiary’s services will be performed at a location other than the petitioner’s principal office, please provide copies of contracts to support these claims.” The RFE also requested that the petitioner provide evidence regarding its business and other workers, along with an organizational chart.

The petitioner broke down the beneficiary’s duties as follows: analyze user needs to determine technical requirements (15% of the time); design, build and maintain websites (30% of the time); develop and provide website specifications (20% of the time); and create and edit computer graphics, computer animations and web pages, e-cards and banners and other multimedia designs/tools using computer languages and technologies (35% of the time). Regarding the employment location, the petitioner responded as follows: “She will be assigned to work with [REDACTED]. This information is in conflict with the petitioner’s statement in the Form I-129 that the beneficiary would be employed at the petitioner’s [REDACTED] [REDACTED] cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Additionally, the petitioner also submitted numerous copies of invoices. With respect to the invoices that pertain to the beneficiary, they indicate that the Richport Group (RPG) is located in Roseland, NJ, although they do not state the location where the beneficiary is actually working. However, copies of time sheets are attached indicating that the beneficiary will work at a third-party client site in Secaucus, NJ, and not at RPG’s offices.

The organizational chart submitted by the petitioner does not list the beneficiary specifically, but indicates that 110-120 “Consultants” report directly to the petitioner’s HR/Recruiting Manager. Although the petitioner states in its corporate profile that it offers online application systems, the corporate profile also states, “In a short span of time, [the petitioner] has grown to be a company committed to excellence in providing high end IT consultants. . . .”

The petitioner also submitted a list of its workers, which indicates that it has two other Network/Graphic Designers, in addition to the beneficiary. According to the petitioner, one of the Network/Graphic Designers has a Bachelor’s degree in Computer Science and MIS, while the other has a Bachelor’s degree in Computer Science.

In response to the RFE, the petitioner also provided numerous copies of contracts it has with clients, but did not provide any contracts pertaining to work to which the beneficiary will be assigned, or that listed the beneficiary by name.

The director denied the petition on June 24, 2009.

On appeal, the petitioner argues that the RFE did not request any/all contracts with end-users for which the beneficiary will be providing services. Although the verbiage used in the denial differs slightly from that used in the RFE, regardless, as discussed previously, the RFE clearly requested this documentation when it stated, “[a]lso provide a copy of the contract with the end user which specifically mentions the beneficiary and the duties he will perform with that end user,” and “[i]f the beneficiary’s services will be performed at a location other than the petitioner’s principal office, please provide copies of contracts to support these claims.”

In addition, the petitioner argues that USCIS did not request additional evidence to establish that the position qualifies as a specialty occupation, that is evidence that the job requires the services of an individual with at least a baccalaureate degree or a detailed statement of the beneficiary’s proposed duties to include the educational requirements for the position. First, the petitioner’s attempt to shift the evidentiary burden in this proceeding is without merit. The burden to establish eligibility in this matter remains solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Furthermore, the regulations governing RFEs clearly indicate that the issuance of an RFE is purely discretionary and that the director may instead deny an application when eligibility has not been established. *See* 8 C.F.R. § 103.2(b)(8). Second, while the AAO agrees with the petitioner that the RFE did not request that the detailed statement of the proposed duties include the educational requirements for the position, the RFE began with “[a]n H-1B classification may be granted to an alien who will perform services in a specialty occupation. . . .” and then went on to request documentation to “[e]stablish the beneficiary will be employed with the duties you have set forth. . . .,” which should include “a detailed description of the proffered position” As the petitioner already provided its minimum requirements for the position in the support letter and as the director did not base his finding that the proffered position is not a specialty occupation on a perceived lack of information regarding the petitioner’s minimum requirements for the position, the petitioner has failed to establish that it was not given a sufficient opportunity to address the director’s bases for denial. Third, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner an additional opportunity to supplement the record with new evidence.

For the first time on appeal, counsel includes a letter from RPG, located in Morristown, NJ, which is dated March 28, 2005. The letter, which was signed by both the petitioner and RPG, states that it serves as an agreement for the beneficiary to work as a consultant with “RPG clients and accounts.” The Agreement does not indicate for which of RPG’s clients the beneficiary will work, the location of the assignment[s] at RPG client sites, or the duration of time the beneficiary is expected to work on each assignment. However, it is clear from this Agreement that the beneficiary is subcontracted by the petitioner to RPG to work at various unnamed third-party client sites.

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 Network Graphic Designer 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 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 at the petitioner's offices in Jersey City, NJ, the beneficiary will be assigned to third-party client sites. Although on appeal the petitioner provided a copy of the Agreement it has with RPG, the petitioner failed to supply copies of any of the contracts RPG has with its clients regarding assignments on which the beneficiary allegedly would work. The petitioner argues that its submission in response to the RFE of copies of invoices with attached time sheets signed by the third party client should be sufficient to evidence the beneficiary's work for the end client. However, although the time sheets submitted are signed by the third party client, located in Secaucus, NJ, they indicate the beneficiary's job title is a web developer, which the petitioner has not demonstrated is the same position as a network graphic designer, as was stated in the petition. Again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Further, no evidence was submitted by the petitioner describing the project in detail or the beneficiary's role in the project, the length of time that the beneficiary would be expected to work on the project, or which entity retains ultimate control over the beneficiary's employment and work product.

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 her placement is related to the provision of a product or service that requires the performance of the duties of a network graphic designer. 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. Indeed, the time sheets submitted by the petitioner indicate that the beneficiary will work in a different occupation at a different location than what was stated in the petition. 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 Michael L. Aytes internal memorandum to support his assertion that the itinerary requirement can be met by providing a general statement of the proposed or possible employment. See INS Central Office Memorandum from Michael L. Aytes, 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 LCA and Form I-129 in this matter, which indicate the proffered position's location as being in Jersey City, NJ for the duration of the petition, do not correspond with the Agreement with RPG, which indicates the beneficiary will be assigned to various RPG clients and accounts, including a client site in Secaucus, NJ, for unspecified durations of time, or the evidence that one of the worksite locations is at a third-party client site in Secaucus, NJ. 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 and corresponds 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 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.

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