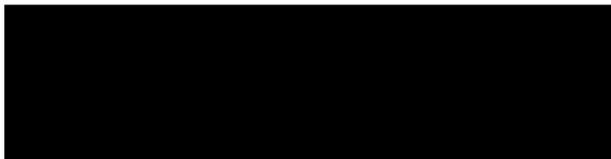


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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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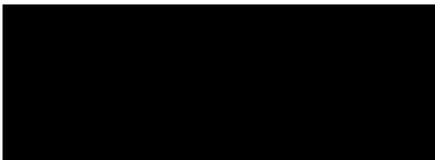
FILE: [Redacted] Office: VERMONT SERVICE CENTER

Date: DEC 06 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:

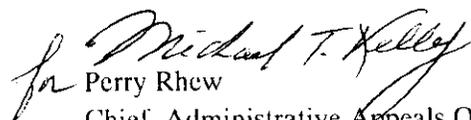


INSTRUCTIONS:

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 \$630. 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 Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the AAO. The appeal will be dismissed. The petition will be denied.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner states that it is a gas station and convenience store, that it was established in 2003, that it employs three to five persons, and that it has an estimated gross annual income of \$500,000. It seeks to extend the employment of the beneficiary as an economist/finance analyst from February 9, 2008 to February 8, 2010.¹ Accordingly, the petitioner endeavors to classify the beneficiary 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 demonstrate that the beneficiary is eligible for an H-1B extension beyond six years under AC21; and (2) the petitioner failed to demonstrate that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B submitted by the petitioner. Although the petitioner entered a check mark at the box at section 2 of the Form I-290B indicating that the petitioner would send a brief and/or evidence within 30 days, the AAO has received neither. The AAO reviewed the record in its entirety before issuing its decision.

The AAO will first determine whether the beneficiary is eligible for an H-1B extension beyond six years under AC21.

The record shows that the beneficiary would already have been present in the United States in H-1B status for six years as of the start date requested in the petition and request for H-1B extension. An Application for Alien Employment Certification (Form ETA 750) was filed by the petitioner on behalf of the beneficiary on September 8, 2005. This Alien Employment Certification application was denied by the U.S. Department of Labor Employment and Training Administration on August 9, 2007.

The director issued a request for additional evidence (RFE) on May 1, 2008 requesting, in pertinent part, evidence

¹ According to the information provided in the petition, the beneficiary has been in the U.S. in H-1B status since February 7, 2002. The AAO notes that in general section 214(g)(4) of the Act, 8 U.S.C. §1184(g)(4) provides that: "[T]he period of authorized admission of [an H-1B nonimmigrant] may not exceed 6 years." However, the "American Competitiveness in the Twenty-First Century Act" (AC21) removes the six-year limitation on the authorized period of stay in H-1B visa status for certain aliens whose labor certifications or immigrant petitions remain undecided due to lengthy adjudication delays. The petitioner requested that the beneficiary's period of stay be extended by two years under AC21, however, under section 11030A(b) of the "Twenty-First Century Department of Justice Appropriations Authorization Act" (DOJ21), which amended § 106(b) of AC21, such extensions are only permitted in one-year increments. Therefore, under AC21, the petitioner may only request that the beneficiary's H-1B status be extended for one year, until February 8, 2009.

that the beneficiary is eligible to extend her H-1B status beyond six years.

In the RFE response, the petitioner provided a copy of the U.S. Department of Labor Employment and Training Administration's (ETA) determination to deny the application for labor certification submitted by the petitioner on behalf of the beneficiary. The petitioner argued that the beneficiary is eligible for an H-1B extension beyond six years under AC21 because the petitioner filed an appeal of the ETA decision to deny the application for labor certification that is still pending. On appeal, the petitioner again argues that the appeal for the labor certification is still pending and, therefore, there has been no final decision on the labor certification application, thereby rendering the beneficiary eligible to extend her H-1B status beyond six years under AC21.

The ETA determination states the following:

If this application was denied because it was incomplete or because the employer did not submit documentation requested by the Certifying Officer to finalize review of the application by the date specified, the failure to provide the requested documentation in a timely manner constitutes refusal to exhaust available administrative remedies and the employer cannot request review of this denial with BALCA as outlined in §656.26.

[Emphasis added.] The determination goes on to state the reason for denial as follows: "A selection was not made for Section K-7, Job 2 End date *and the application is incomplete.* Therefore, per 656.17(a), this application is denied." [Emphasis added.]

Because the labor certification application was denied due to being incomplete, it appears that the denial was not eligible for review. Therefore, although the petitioner alleges that it filed a request for review of the decision on the application for labor certification, because the petitioner has not demonstrated eligibility for such a review or that BALCA accepted its request for review, the petitioner has not demonstrated that the labor certification application is still pending.

The AAO notes that in general section 214(g)(4) of the Act, 8 U.S.C. §1184(g)(4) provides that: "[T]he period of authorized admission of [an H-1B nonimmigrant] shall not exceed 6 years." However, AC21 removes the six-year limitation on the authorized period of stay in H-1B visa status for certain aliens whose labor certifications or immigrant petitions remain undecided due to lengthy adjudication delays, and broadens the class of H-1B nonimmigrants who may avail themselves of this provision.

As amended by § 11030A(a) of DOJ21, § 106(a) of AC21 reads:

(a) EXEMPTION FROM LIMITATION. -- The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. § 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of *such Act* (8 U.S.C. § 1101(a)(15)(H)(i)(b)), if 365 days or more have elapsed since *the filing of any of the following*:

(1) Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. § 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. § 1153(b)).

(2) A petition described in section 204(b) of such Act (8 U.S.C. § 1154(b)) to accord the alien a status under section 203(b) of such Act.

Section 11030A(b) of DOJ21 amended § 106(b) of AC21 to read:

(b) EXTENSION OF H-1B WORKER STATUS--The [Secretary of Homeland Security] shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one-year increments until such time as a final decision is made—

(1) to deny the application described in subsection (a)(1), or, in a case in which such application is granted, to deny a petition described in subsection (a)(2) filed on behalf of the alien pursuant to such grant;

(2) to deny the petition described in subsection (a)(2); or

(3) to grant or deny the alien's application for an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence.

Pub. L. No. 107-273, §11030A, 116 Stat. 1836, 1836-37 (2002) (emphasis added to identify sections amended by DOJ21).

As discussed previously, the petitioner's labor certification application was denied on August 9, 2007 and the petitioner failed to demonstrate that it had a basis to request a review of this denial or that BALCA accepted the petitioner's request for review of this denial. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The lack of a valid labor certification application precludes USCIS from further processing petitions or applications dependent upon those labor certification applications.

Accordingly, the director did not err in concluding that the beneficiary is not exempt from the maximum six-year period of stay permitted for H-1B nonimmigrants under section 214(g)(4) of the Act. Therefore, the appeal is dismissed and the petition is denied on this ground.

Next, the AAO will consider whether the proffered position is a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

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, the 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.

In this matter, the petitioner seeks the beneficiary’s services as an economist/financial analyst. The petitioner’s support letter and response to the RFE indicate the proffered position would require the beneficiary to perform the following duties:

- Plan, design, and conduct research to aid in the interpretation and solution of problems arising from services provided to the public and development and implementation of financial plans (50% of the time);
- Study economic data in the area of finance (5%);
- Devise methods of collecting and processing data (5%);
- Compile data relating to employment, productivity, wages, and hours (15%);
- Review and analyze economic data to prepare reports and submit documents for financial plan (10%);
- Formulate recommended changes (10%); and
- Confer with industry representatives to evaluate and promote expanded services in the geographical area (5%).

The petitioner states that the proffered position requires “[a] Bachelors degree in Economics[.]”

The petitioner submitted copies of the beneficiary’s foreign degree along with an educational evaluation, which evaluates the beneficiary’s foreign education as equivalent to a bachelor’s degree in economics earned at a regionally accredited institution of higher education in the United States.

The petitioner also provides documentation regarding its business, including photographs, which indicates that it is an individual gas station/convenience store. Although the RFE specifically stated that the documentation must demonstrate that the petitioner was conducting sufficient business to support the proffered position and requested that the petitioner provide a brief job description for the majority of positions that the petitioner employs, including job titles, duties, and education requirements, the petitioner did not provide this information. The petitioner states that the beneficiary is the only person to hold the proffered position.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. The director noted that the petitioner failed to establish that it has a business that would require the full-time services of an economist/financial analyst.

On appeal, the petitioner argues that the evidence submitted already demonstrates that the proffered position is a specialty occupation and that because USCIS previously approved H-1B petitions filed by the petitioner for the beneficiary to perform the duties as proffered, this further demonstrates that the proffered position is a specialty occupation.

To make its determination whether the proffered position, as described in the initial petition and the petitioner's response to the RFE, qualifies as a specialty occupation, the AAO 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, 2010-11 online edition (*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)).

As the petitioner did not provide all the evidence requested in the RFE to demonstrate a business justification for hiring a full-time economist/financial analyst who would perform specialty occupation duties without performing any non-qualifying duties, and as the proffered duties are generically described without being supported by documentation that the petitioner requires someone to perform the proffered duties, the AAO is unable to determine that the proffered position is actually that of a economist/financial analyst. The petitioner's position description, which is vague and generic, primarily describes the type of duties that would normally be performed by a financial analyst, but the petitioner fails to demonstrate that the nature of its business supports the hiring of a financial analyst. The petitioner was given an opportunity to elaborate on the position description in response to the RFE, but the petitioner instead reiterated the duties from the initial support letter. The 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).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not find that the proffered position is that of a financial analyst, for which most companies require at least a bachelor's degree in finance, business administration, accounting, statistics, or economics. See the *Handbook's* Chapter on Financial Analysts. As discussed by the *Handbook*, 2010-11 online edition, financial analysts are individuals who:

[a]ssess the economic performance of companies and industries for firms and institutions with money to invest. Also assess the performance of stocks, bonds, commodities, and other types of investments. Also called securities analysts and investment analysts, they work for banks, insurance companies, mutual and pension funds, securities firms, the business media, and other businesses, making investment decisions or recommendations. Financial analysts study company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates to determine a company's value by projecting its future earnings. They often meet with company officials to gain a better insight into the firms' prospects and management.

Financial analysts can be divided into two categories: buy side analysts and sell side analysts. Analysts on the buy side work for companies that have a great deal of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent money managers, and nonprofit organizations with large endowments. Buy side financial analysts devise investment strategies. Conversely, sell side analysts help securities dealers, such as banks and other firms, sell stocks, bonds, and other investments. The business media hire financial advisors that are supposed to be impartial, and occupy a role somewhere in the middle.

In this matter, the petitioner is not an investment bank, insurance company, mutual and pension fund, securities firm, business media, or institutional investor, as described above by the DOL. Rather, the petitioner is a gas station/convenience store that allegedly employs three to five employees. The petitioner has not demonstrated that it will employ the services of a financial analyst, whose primary role is to assess the economic performance of companies and industries for firms and institutions with money to invest. Furthermore, there is no evidence that the position offered includes complex or advanced financial planning duties involving mergers and consolidations, global expansion and financing, or that the position requires an individual with a knowledge of sophisticated financial planning techniques normally associated with the duties of a financial analyst.

The record in this matter is insufficient to establish the proffered position as a specialty occupation. As reflected in the above discussion, the nature of the proffered position remains unclear. The petitioner must provide independent objective evidence of the daily tasks the petitioner requires as it relates to its specific business. The petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise, essentially permits acceptance of any petitioner's broadly stated description, e.g., a description copied nearly word-for-word from the *Handbook*, rather than a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary and what the proffered position actually requires.

The petitioner does not provide evidence of what the beneficiary does or will do on a day-to-day basis. Only a detailed job description as it relates to the petitioner's specific business will suffice to meet the burden of proof in these proceedings. See *Defensor v. Meissner*, 201 F. 3d 384. The duties of the proffered position are only generally and generically described. They do not convey the substantive work that would be required of the

beneficiary. The petitioner also provides no evidence in support of a justification for hiring an economist/financial analyst. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). Therefore, the petitioner has not established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

Accordingly, the petitioner has not established the 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: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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. The petitioner has not submitted documentation establishing its degree requirement as an industry norm for gas stations/convenience stores. As a result, the petitioner has not established a degree requirement in parallel positions.

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." As evident in the earlier discussion about the generalized descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than similar positions that can be performed by persons without a bachelor's degree in a specific specialty or its equivalent. Moreover, it does not appear that the petitioner's business justifies the hiring of someone to perform the proffered duties.

As 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 has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO does not find that sufficient evidence was provided to demonstrate that the proffered duties reflect a higher degree of knowledge and skill. As stated previously, the petitioner did not demonstrate that its business supports the hiring of a financial analyst. Therefore, the proffered duties do not appear to be an accurate depiction of what the beneficiary would actually be doing. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). The AAO, therefore, concludes that the proffered position has not been established as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Therefore, the petitioner has failed to demonstrate that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

Beyond the decision of the director, the AAO also finds that the petitioner failed to submit requested evidence that precludes a material line of inquiry. The petitioner and counsel did not provide additional documentation and details about the proffered position that were specifically requested by the director to provide further information that clarifies whether the proffered position is a specialty occupation. 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 petition will be denied and the appeal dismissed 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