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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:

Office: VERMONT SERVICE CENTER

Date: DEC 28 2010

IN RE:

Petitioner:

Beneficiary:

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

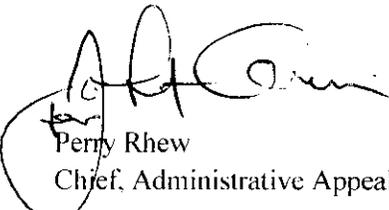
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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 of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner claims to be an investment and management corporation that acts as the agent for the [REDACTED] a non-profit research facility promoting and coordinating research and related activities among Muslim scholars.¹ The petitioner seeks to extend the employment of the beneficiary as a publication manager, and therefore 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, finding that the proffered position is not a specialty occupation. On appeal, counsel for the petitioner submits a brief and additional evidence.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with counsel for the petitioner's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

The 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

¹ It is noted that the petitioner's actual name is [REDACTED]. In addition, although it claims to be an agent for [REDACTED], it is apparent from its support letter that it is filing the instant petition as the United States employer of the beneficiary and not as an agent for the beneficiary's employer.

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 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.

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. *Cf. 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.

The petitioner seeks the beneficiary's services as a publication manager. In a letter of support dated January 7, 2009, the petitioner stated:

[The petitioner] would like to continue to employ [the beneficiary] as [REDACTED]. In that capacity, [the beneficiary] will continue to be responsible for soliciting manuscripts in English and Arabic; negotiating and concluding contracts with authors, printers, and publishers; assessing marketing potentials for each title and developing business plan, format, quality, and scheduling; and managing production and distribution.

In addition, [REDACTED] serves as a member of our Publications Committee, composed of academic scholars, internal researchers, the Director of Research, and the Vice President for Research and Publishing, which meets monthly to review manuscripts and decide on their publication. The Committee also identifies and develops academic areas of interest, and tasks the Publication Manager to solicit articles, proposals for books, and manuscripts in these areas to be considered for publication.

The specific duties of the position are outlined as follows:

1. Solicit and receive manuscripts in English and Arabic
2. Negotiate and conclude contracts with authors, printers, and publishers
3. Develop and implement publishing policies and strategies in coordination with the VP for Research and Publishing
4. Serve as a member of the publications committee
5. Work closely with the Research department and AJISS department
6. Coordinate manuscript preparation with authors, editors, copyeditors, and proofreaders
7. Manage process of copy production, editing, printing, distribution, and royalties disbursement
8. Develop and implement marketing strategies for books and journals
9. Supervise the subscription and circulation process of two journals
10. Research and develop pricing policies
11. Work with academicians to compose, edit, and publish academic reviews
12. Coordinate and manage book exhibitions
13. Draft, edit, design, print and distribute promotional materials
14. Supervise shipping and distribution activities
15. Manage inventory storage facilities

16. Assist in the content development of the publications website
17. Assist in the development and implementation of translation policies and strategies
18. Coordinate translations projects with translators, editors, copyeditors, and publishers

In a request for evidence dated November 20, 2009, the director requested additional evidence demonstrating that the proffered position was a specialty occupation. Specifically, the director noted that the description of duties provided was vague, and requested more details regarding the beneficiary's actual duties, as well as information on other employees in similar positions and their educational backgrounds. The director further noted that the record lacked evidence to demonstrate that a baccalaureate degree in a specific specialty was required to perform the duties of the proffered position.

In a letter dated December 31, 2009, the petitioner addressed the director's queries. The petitioner provided the following updated description of the duties of the proffered position:

1. Soliciting manuscripts in English and Arabic

- Solicit and receive manuscripts in English and Arabic languages on certain topics articulated by the VP (Research and Publishing) and Publications Committee. This includes determining topics, research, review of manuscripts, analysis, and working on proposals to develop topics.
- Serve as a member of the publications committee in evaluating and deciding on new and current manuscripts.
- Review and suggest modification to manuscript organization, check citation and references, suggest additional resources for subtopics, and check facts accuracy and consistency in adhering to [REDACTED] standards.
- Work closely with the research and AJISS (American Journal of Islamic Social Sciences, a quarterly refereed journal) departments in preparing and publishing their materials.
- Coordinate manuscript preparation with authors, copyeditors, and proofreaders.
- Develop and implement translation policies, strategies, and coordination.
- Develop and implement publishing policies and strategies in coordination with the Publishing Committee.

2. Negotiating and concluding contracts with authors, printers, and publishers.

- Negotiation with authors on editorial specifics and content development, structure/restructure manuscripts, copyright acquisition and clearance, foreign copyright negotiation, promotion and publicity plans, and royalty mechanism.
- Negotiate with printers the format, paper stock, production schedule, packaging and price.
- Negotiate with Publishers copyright arrangements, regional rights, layout and design, paper stock, editorial process and decisions, distribution territories, and price.

3. Assessing marketing potentials for each title and developing business plan, format, quality, and scheduling.

- Develop and implement marketing strategies for books and journals.
- Assess marketing potential for books and journals and research and develop pricing policies.
- Coordinate and manage book exhibitions and marketing campaigns.
- Work with academicians to compose, edit, and publish academic reviews.
- Supervise the subscription and circulation process of journals.
- Develop promotional materials for books and ads for journals and magazines.

4. Managing production and distribution.

- Manage process of copy production, editing, printing, distribution, and royalties disbursement.
- Manage distribution channels to wholesalers, bookstores, and libraries.
- Supervise the subscription and circulation process of journals.
- Supervise shipping activities.
- Manage inventory for storage facilities.

In addition, the petitioner contended that the majority of its staff held at least a bachelor's degree except for a assist handling mail room and office supply functions, and the assistant to the Vice President. Regarding the specific position offered to the beneficiary, the petitioner indicated that a minimum of a baccalaureate degree in communications or closely related fields, such as linguistics, literature, or journalism is required. The petitioner further noted that its other publications manager holds a baccalaureate degree in linguistics. In conclusion, the petitioner contended that the beneficiary, who holds a bachelor of science in communications and a master of business administration, is consequently qualified for the proffered position.

The petitioner also submitted approximately 9 copies of various job postings for similar positions in the industry in support of the contention that a degree requirement was common in the industry. Furthermore, the petitioner submitted testimonies from similar organizations in the industry claiming that a degree in communications or a related field was in fact a common requirement.

The director denied the petition, finding that the proposed duties do not require a bachelor's degree and that the petitioner had failed to establish that a degree requirement was common in the industry. The director noted that despite prior approvals for the beneficiary in the proffered position, USCIS was not bound to approve subsequent petitions where a prior approval based on the same evidence may have been erroneous.

On appeal, counsel for the petitioner asserts that, contrary to the director's conclusions, there was no material error that would warrant denial of the instant petition. Counsel contends that, by virtue of the three prior approvals granted in this matter, it is evident that the proffered position is a specialty occupation. In support of this contention, counsel contends that the director erroneously discounted relevant evidence provided by the petitioner in support of the petition. Additionally, the petitioner contends that the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* indicates that writers and editors, the

occupation most closely aligned to that of publications manager, demonstrates that the proffered position requires a baccalaureate degree as minimum educational requirement.

Upon review of the record, the AAO concurs with the director's decision and finds that the petitioner has established none of the four criteria additional outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position is a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement 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. Factors often considered by USCIS when determining these criteria 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)).

In determining whether a proposed position qualifies as a specialty occupation, USCIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

On appeal, counsel contends that the proffered position is most closely aligned to the writing and editing category. A review of the chapter pertaining to "Authors, Writers, Editors" indicates that:

Authors, writers and editors produce a wide variety of written materials in an increasing number of ways. They develop content using any number of multimedia formats that can be read, listened to, or viewed onscreen. **Although many people write as part of their primary job, or on online chats or blogs, only writers and editors who are paid to primarily write or edit are included in this occupation.**

(Emphasis added).

Counsel contends on appeal that the beneficiary's position is akin to that of an editor. The *Handbook* goes on to describe this occupational category as follows:

Editors review, rewrite, and edit the work of writers. They also may do original writing. An editor's responsibilities vary with the employer and type and level of editorial position held. Editorial duties may include planning the content of books, journals, magazines, and other general-interest publications. Editors also review story ideas proposed by staff and freelance

writers then decide what material will appeal to readers. They review and edit drafts of books and articles, offer comments to improve the work, and suggest possible titles. In addition, they may oversee the production of publications. In the book-publishing industry, an editor's primary responsibility is to review proposals for books and decide whether to buy the publication rights from the author.

Most editors begin work as writers. Those who are particularly adept at identifying stories, recognizing writing talent, and interacting with writers, may be interested in editing jobs.

The *Handbook* indicates that, while a bachelor's degree is typically the minimum educational requirement for entry into the position, degrees in communications, journalism, and English are only preferred, not required. In addition, the *Handbook's* description of this occupation indicates that this category is reserved for persons primarily engaged in writing or editing. A review of the petitioner's description of duties indicates that, while the beneficiary is responsible for a variety of tasks, none of his identified duties include editing.

The statement of duties provided with the petition indicates that the beneficiary's duties encompass many duties. For example, his tasks include soliciting manuscripts in English and Arabic; negotiating and concluding contracts with authors, printers, and publishers; assessing marketing potentials for each title and developing business plan, format, quality, and scheduling; and managing production and distribution. These tasks fall into entirely different occupational categories. Therefore, a strict review of the *Handbook's* description of writers and editors indicates that only persons paid to *primarily edit* are included in this particular occupation. Consequently, the AAO finds that the proffered position is not included in this occupational category as contended by counsel, since the proffered position's editing duties may comprise, if any, only a small percentage of the overall duties of the position. Consequently, counsel's reliance on the *Handbook's* section pertaining to writers and editors is insufficient to establish that the proffered position is a specialty occupation under the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1).²

Counsel also contends that the petitioner had met its burden of proof regarding the first criterion as a result of the petitioner's statements in its December 31, 2009 response to the RFE, in which it contended that the proffered position's degree requirement was established by the petitioner's statement that a bachelor's degree in communications, linguistics, literature, or journalism is normally the minimum requirement for entry into this position. However, simply going on record without supporting documentation is not sufficient for the 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)). While a petitioner may believe that a proffered position requires a degree, that opinion alone cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a particular baccalaureate or higher

² Even so, as noted above, the *Handbook* only states with regard to editors that a degree in a specific major is preferred, not required. As such, the *Handbook* does not indicate that a degree in a specific specialty or its equivalent is normally the minimum requirement for entry into an editor position.

degree, irrespective of whether the position actually requires it as prescribed by the Act. *See Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

In support of the contention that a specific degree requirement is common to the industry in parallel positions among similar organizations, the petitioner submitted nine job postings for publications managers from various industries. As noted by the director, however, these postings are insufficient to establish eligibility under this criterion, because none of these postings state that a four-year degree *in a specific specialty* is required. In fact, most of these postings state that, while a bachelor's degree is required in most cases, a various number of fields, such as communications, English, business administration, and marketing are acceptable for entry into the proffered position. The petitioner overlooks the fact that merely requiring a degree, without limiting the degree requirement to a specific field or specialty, is simply insufficient for establishing eligibility in this matter. As correctly noted by the director, none of these postings consistently require a degree in a specific specialty.

Furthermore, in addition to its failure to demonstrate a specific degree requirement is common in parallel positions in the industry, the petitioner has failed to establish how the job postings submitted are for parallel positions in similar organizations. The AAO can find no correlation between these entities and the business operations of the petitioner. For example, the petitioner submits postings from various educational institutions, such as Harvard University and Manhattan College, as well as from major organizations such as the American Association for Cancer Research. It is unclear how these nationally established entities can be considered similar in size and scope to the petitioner's organization, which currently employs twelve full-time employees. None of the listings submitted indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. Thus, the advertisements are insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

Moreover, the AAO notes that the petitioner submitted letters from several publishers in the industry. Specifically, the record contains letters from the following:

(1) [REDACTED]

- (2) [REDACTED] Executive Director/News Editor for American Educational Trust
- (3) [REDACTED] Director of Clarity Press, Inc.;
- (4) [REDACTED] Publications Department for Interfaith Studies, Boston Theological Institute;
- (5) [REDACTED], Departments of Law and Sociology at Carleton University; and
- (6) [REDACTED] Director of Administration for the petitioner.

As noted by the director, all six of these testimonies contain differing information; namely, some conclude that the description of the petitioner's publications manager position requires a minimum of a four-year degree in communications or a closely related field such as literature, linguistics, or journalism, whereas other indicate that degrees such as marketing, English, and business administration are acceptable. While most of these writers indicate that their staff possess bachelor's degrees, they do not indicate provide an overview of their staffing and/or organizational hierarchy, which would demonstrate to the AAO whether these entities in fact employed publications managers and were familiar with the duties and required qualifications for such a position. Nor have any of these persons claimed to have worked as publications managers or to have hired publications managers where they required such candidates to possess bachelor's degrees in the fields above. These varying and contradictory opinions which claim that the duties of the proffered position can be performed by a person with a degree in any one of the disciplines noted above, implies that the proffered position is not, in fact, a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question.

The petitioner submitted no other documentation from other professional associations of persons serving in the type of position proffered in this petition attesting that at least a bachelor's degree in a specific specialty, or its equivalent, is the standard minimum educational credential required for entry into the proffered position. Moreover, the petitioner has likewise failed to submit letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals."

Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations. Therefore, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a demonstration that the position is so complex or unique that it can only be performed by an individual with a degree. The job description of the proffered position, as noted by the director, is vague and provides little detail regarding the exact day-to-day duties of the publications manager. While the petitioner was afforded the opportunity to provide additional details regarding the nature and complexity of the position in response to the RFE, the petitioner instead chose to expand the list of duties to include new tasks that have since been discounted. 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). Thus, the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions. Moreover, the AAO notes that the petitioner finds acceptable a

variety of degrees as opposed to a degree in a specific specialty, which precludes classification as a specialty occupation under this criterion.

In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed or non-specialty degreed employment as a publications manager. Moreover, the evidence of record about the particular position that is the subject of this petition does not establish how aspects of the position, alone or in combination, make it so unique or complex that it can be performed only by a person with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. In the initial letter of support and in response to the RFE, the petitioner claimed that it employed two publications managers including the beneficiary. Moreover, the petitioner claimed that most of its employees possessed either a Ph.D. or a master's degree.

In its letter responding to the RFE dated December 31, 2009, the petitioner indicated that the second publications manager held a bachelor's degree in linguistics. In support of this contention, the petitioner submitted copies of the diploma, transcript, and W-2 forms for [REDACTED], the second publications manager employed by the petitioner. It is noted that, contrary to the petitioner's assertion, the transcript reveals that [REDACTED]'s degree is in education with a major in English, not communications.

Regardless of the fact that [REDACTED] holds a degree, there is insufficient evidence to demonstrate that he is employed as a publications manager as contended by the petitioner, since aside from his W-2 form for 2008, no details of his position, such as an employment contract or offer letter, are provided. In addition, the fact that the petitioner may employ one other person in the position of publications manager who possesses a bachelor's degree is not sufficient to establish that the petitioner routinely hires only degreed individuals for the proffered position.

The petitioner further contends that it previously employed four persons in the position of publication manager from 2001 to 2003. While the petitioner provides the names of such employees as well as the W-2 forms for one of these persons, no further evidence of their employment with the petitioner or their actual credentials is submitted. Absent this evidence, along with the petitioner's failure to submit evidence outlining the nature of their alleged positions while working for the petitioner, the AAO is not persuaded that the petitioner has a history of hiring only degreed individuals for the proffered position.

In addition, the AAO observes that the petitioner's desire to employ an individual with a bachelor's degree or equivalent does not establish that the position is a specialty occupation. The critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. As discussed previously, if USCIS

were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. Accordingly, the AAO finds that the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The evidence of record does not establish this criterion. However, if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). In addition, USCIS will reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (“[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to ‘fact’ but rather is admissible only if ‘it will assist the trier of fact to understand the evidence or to determine a fact in issue.’”).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner provides a general overview of the duties of the proposed position in the initial letter of support. The petitioner, however, has not established that the duties to be performed exceed in scope, specialization, or complexity those usually performed by a degreed individual. To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, the AAO notes that counsel takes issue with the finding that the previously approved petitions constituted material error. However, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval 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).

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 the nonimmigrant petitions on behalf of the 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). Finally, the prior approvals do not preclude USCIS from denying an extension of the original visa 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).

Therefore, for the reasons related in the preceding discussion, the proposed position does not qualify for classification as a specialty occupation under any of the four additional criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The proposed position in this petition is not a specialty occupation, so the beneficiary's qualifications to perform its duties are inconsequential. Accordingly, the AAO will not disturb the director's denial of the petition.

Beyond the decision of the director, 8 C.F.R. § 214.2(h)(14) states in pertinent part that "[a] request for a petition extension may be filed only if the validity of the original petition has not expired." Here, the prior petition [REDACTED] that this petition seeks to extend was never valid. It was never approved, and the appeal of the denial of that petition is simultaneously being dismissed with the appeal in the instant matter. The instant petition seeking to extend an invalid petition must therefore be denied for this additional reason.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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