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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



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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 30 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 director of the Vermont 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 is a television broadcasting communications company, which claims to have 22 employees. It seeks to employ the beneficiary as a media program manager 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 concluding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation.

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

The primary issue in this matter is whether the proffered position qualifies as a specialty occupation.

Section 214(i)(1) of 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.

The petitioner states that it is seeking the beneficiary's services as a media program manager. In the June 11, 2009 letter of support, the petitioner described the position as:

[having] overall responsibility for program development, production and presentation including selection of scripts/programs, approval of development of script ideas, program scheduling, determination of cost of production, hiring of performers and other staff to produce quality programs that are to be completed within rigid schedule and formats as well as budgetary limitations. This will include budgeting and production planning for both present and proposed television programs as well as presentation designing and staff training, programs procurement and out-source allocations. This employee will also continue to interpret and edit scripts, express concepts and approve design elements for production. As media program manager this employee will have responsibility for oversight and management of television coverage of national events (Pakistan chapter), produce and direct several daily live inter-active talk shows . . . oversee, manage, supervise and administer the taping and recording of exclusive interviews with local political, governmental, community leaders and other similar figures in the Greater New York Metropolitan area

The petitioner stated its minimum degree requirement for the proffered position is a bachelor's degree in

media programming or media communications.

The petitioner also submitted a combination expert opinion letter and credential evaluation from [REDACTED]. The credential evaluation states that the beneficiary has the equivalent of a master of science degree in public relations media planning through a combination of education and experience. The petitioner also submitted the beneficiary's foreign education documents and experience letters.

The director issued an RFE requesting further evidence that the proffered position is a specialty occupation and that the beneficiary qualifies to perform the duties of a specialty occupation.

The petitioner provided a second letter from [REDACTED] which describes the professional experience on which the credential evaluation was based and restates that the beneficiary has the equivalent of a master of science degree with a concentration in public relations media planning from an institution of higher education in the United States.

Additionally, the petitioner provided letters from Media Broadcasting Network LLC and JUS PUNJABI LLC, companies that it asserts are parallel to the petitioner and allegedly employ media program managers. Both companies state that they require at least a bachelor's degree or equivalent in broadcast communications, television production, media communications or another closely related field for their media program managers.

The petitioner also submitted one advertisement from the Walt Disney Company for a program planning and scheduling coordinator, which indicates that a bachelor's degree is required. However, the advertisement does not state that the degree must be in a specific specialty, only that a bachelor's degree in business, broadcasting, or communications is preferred.

The petition was denied on March 9, 2010 on the ground that the petitioner failed to demonstrate that the proffered position is a specialty occupation.

On appeal, counsel for the petitioner submits an additional letter from one of the companies that stated that it requires at least a bachelor's degree or equivalent in broadcast communications, television production, media communications or another closely related field for its media program manager. This letter states that the person who currently holds this position has a U.S. master's degree from Boston University in broadcast journalism along with a copy of a letter from Boston University confirming this degree. Counsel argues that the two letters the petitioner submitted from other firms are sufficient to demonstrate that the proffered position is a specialty occupation.

To determine whether a particular job qualifies as a specialty occupation position, the AAO does not solely rely on the job title or the extent to which the petitioner's descriptions of the position and its underlying duties correspond to occupational descriptions in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*. Critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the beneficiary will likely perform for the entity or entities ultimately determining the work's content.

The opinion letter from [REDACTED] states that the proffered position is closest to that of a public relations specialist in the *Handbook*. However, the AAO disagrees with this assessment. According to the *Handbook* (2010-11 online edition), public relations specialists serve as advocates for clients seeking to build and maintain positive relationships with the public and:

[h]andle organizational functions, such as media, community, consumer, industry, and governmental relations; political campaigns; interest-group representation; conflict mediation; and employee and investor relations. Public relations specialists must understand the attitudes and concerns of community, consumer, employee, and public interest groups to establish and maintain cooperative relationships between them and representatives from print and broadcast journalism.

Public relations specialists draft press releases and contact people in the media who might print or broadcast their material. Many radio or television special reports, newspaper stories, and magazine articles start at the desks of public relations specialists. Sometimes, the subject of a press release is an organization and its policies toward employees or its role in the community. For example, a press release might describe a public issue, such as health, energy, or the environment, and what an organization does to advance that issue.

Public relations specialists also arrange and conduct programs to maintain contact between organization representatives and the public. For example, public relations specialists set up speaking engagements and prepare speeches for officials. These media specialists represent employers at community projects; make film, slide, and other visual presentations for meetings and school assemblies; and plan conventions.

This position description does not encompass the primary proffered duties, which include having overall responsibility for program development, production and presentation, including selection of scripts, program scheduling, and hiring performers and other staff. Therefore, the AAO does not find that the proffered position is closest to that of a public relations specialist.

Instead, the AAO finds that the proffered position falls within the *Handbook's* section on broadcasting, which covers occupations in radio and television. This section states that "employees in program production occupations at television and radio stations create programs such as news, talk, and music shows." As described previously, the beneficiary's primary duties appear to be closest to that of a producer, which is described as follows in the *Handbook* in the section on program production occupations:

Producers plan and develop live or taped productions, determining how the show will look and sound. They select the script, talent, sets, props, lighting, and other production elements. Producers also coordinate the activities of on-air personalities, production staff, and other personnel.

The AAO takes administrative notice of the Foreign Labor Certification Datacenter *Online Wage Library*, which the petitioner used as a basis for the prevailing wage in the LCA. The AAO notes that the prevailing

wage listed in the petitioner's LCA of \$48,776 (which is also the proffered salary) corresponds exactly for the entry level (level 1) prevailing wage for television producers and directors in Long Island City, NY for the date the LCA was filed. Therefore, not only does the petitioner appear to agree that the proffered position is actually closer to that of an individual working in the broadcast industry rather than as a public relations specialist, but also the petitioner intends to pay the beneficiary an entry level wage, indicating that the proffered job is an entry-level position. Regarding the training and education of people working in program production, the *Handbook* states, "[e]ntry-level jobs in news or program production increasingly are requiring a college degree and some broadcast experience." Although the *Handbook* indicates that entry level program production positions increasingly require a college degree, it does not state that a college degree is normally required for this occupation or that the college degree must be in a *specific specialty*. Therefore, the *Handbook* does not support the proffered position as being a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied 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)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty.

Regarding [REDACTED] expert opinion letter, as discussed previously, the AAO disagrees (and it appears that the petitioner also disagrees given its intention to pay the beneficiary the prevailing wage of an entry level program director) with [REDACTED] that the proffered position is closest to that of a public relations specialist. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Therefore, the AAO finds that the letter from [REDACTED] does not establish that the proffered position is a specialty occupation.

Regarding the letters submitted from Media Broadcasting Network LLC and JUS PUNJABI LLC, while the AAO agrees that these two companies appear to be parallel to the petitioner, Media Broadcasting Network

LLC did not provide documentary evidence to support its claim that its media program manager has at least a bachelor's degree or the equivalent in broadcast communications, television production, media communications or another closely related major. 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)). Therefore, the letter from Media Broadcasting Network LLC is not probative for these proceedings.

Regarding JUS PUNJABI LLC, for the first time on appeal counsel provides a letter from its media program manager, along with a copy of a letter from Boston University confirming that this individual holds a master's degree in broadcast journalism. However, this individual writes that in addition to working full-time as a media programs manager, he is also an equity owner of the channel and serves "[o]n our executive team as a Senior Executive Vice-President." As an executive and owner, this individual presumably holds additional responsibilities at a more senior level than the proffered position, which, as discussed previously, is being offered an entry level wage. Therefore, the petitioner has failed to demonstrate that the position held by the individual at JUS PUNJABI LLC is parallel to the proffered position in this petition. Moreover, documentation from only one company is insufficient to establish that the petitioner's industry as a whole normally requires at least a bachelor's degree or its equivalent in a specific specialty for program directors.

The one advertisement submitted by the petitioner in response to the RFE is for a program planning and scheduling coordinator. This advertisement was placed by the Walt Disney Company, which is a corporation that is much larger and more diverse than the petitioner. Additionally, the Walt Disney Company states that it requires a bachelor's degree or equivalent for the position, but does not state that the bachelor's degree must be in a *specific specialty*. Instead, the Walt Disney Company states only that a bachelor's degree in business, broadcasting, or communications is preferred. Therefore, the advertisement from the Walt Disney Company does not demonstrate that the proffered position is a specialty occupation.

The petitioner has also not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than media program manager positions that can be performed by persons without a specialty degree or its equivalent. As discussed previously, the petitioner appears to have classified the proffered position as entry-level based on the proffered salary and the prevailing wage.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree or its equivalent in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than media program manager positions that are not usually associated with a degree in a specific specialty. Indeed, as discussed previously, the petitioner considers this position to be entry-level based on the

proffered and prevailing wage of \$48,776 per year.

Therefore, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Beyond the decision of the director, the AAO finds that the petitioner did not submit sufficient documentation to show that the beneficiary qualifies to perform services in any specialty occupation requiring at least a bachelor's degree or the equivalent in media programming or media communications under 8 C.F.R. § 214.2(h)(4)(iii)(C).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary's foreign degree has not been determined to be the equivalent of a U.S. degree in media programming or media communications. Therefore, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), in order for the beneficiary to qualify for a specialty occupation requiring a degree in media programming, communications or a related field, the record must demonstrate that he has education, specialized training, and/or progressively responsible experience equivalent to a U.S. baccalaureate or higher degree in the

specialty, as well as recognition of his expertise through progressively responsible positions directly related to this specialty.

As discussed previously, the petitioner submitted a credential evaluation from [REDACTED] which states that the beneficiary has the U.S. equivalent of a master of science degree in public relations media planning from a regionally accredited university through a combination of his education and experience. Although [REDACTED] states that he granted college-level credit to students based on foreign education experience at California State University, the petitioner does not provide independent evidence from California State University to support this assertion and verify that [REDACTED] has and continues to have this authority, nor was evidence submitted that California State University has a program for granting credit based on an individual's training and/or work experience. The AAO therefore finds that the evaluation from [REDACTED] together with the supporting documentation submitted, does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Aside from the decisive fact that the evidence of record does not establish [REDACTED] as competent under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) to evaluate experience, the AAO finds that the content of his evaluation of the beneficiary's experience would merit no weight even if [REDACTED] were qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). [REDACTED] bases his evaluation on the beneficiary's experience in public relations, which, as discussed previously in this decision, does not appear relevant to a position that is not in the field of public relations, but, instead, is in broadcasting. As this evaluation does not establish a substantive basis for its conclusion, it would have no probative value even if it were rendered by an official qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. Again, however, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), USCIS may determine that the beneficiary has the equivalent of a degree in media programming or media communications if he has a combination of education, specialized training, and/or work experience in areas related to this specialty. The evaluation on record is not supported by specific evidence. The letter from Business Plus is an offer letter to the beneficiary as a program manager, but does not verify that he actually accepted the job offered or the length of time in which he worked in the position. Additionally, the letter from Media Magic for a position as a resident manager is also an offer letter that does not verify that the beneficiary accepted the position or the period of time in which he worked in that position. Therefore, these two offer letters are not probative for these proceedings.

The petitioner submitted three letters from NTM Lahore (including the one provided on appeal), which indicate that he was promoted to program manager in March 25, 1994 and that he worked in that position for approximately five years. However, these letters do not demonstrate that the beneficiary has relevant experience gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in media programming or media communications. Although the beneficiary worked for NTM Lahore in a previous position for approximately four years, the title and job description of the prior position were not provided in the letters. Therefore, the AAO cannot evaluate whether this prior experience is relevant. Moreover, the record lacks the required showing of the beneficiary's expertise in media programming or media communications. The evidence, therefore, does not establish that the beneficiary is

qualified to perform a specialty occupation requiring at least a bachelor's degree or its equivalent in media programming, media communications, or a closely related field.

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).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO also finds that the beneficiary is not qualified to perform the duties of a specialty occupation requiring at least a bachelor's degree or its equivalent in media programming, media communications, or a closely related field. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.