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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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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date:

JUN 01 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:

[Redacted]

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
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to continue to employ the beneficiary in the position of programmer analyst as an H-1B nonimmigrant 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 petitioner describes itself as an information technology consulting and solutions firm and indicates that it currently employs 123 persons.

The acting director denied the petition based upon his determination that the petitioner had failed to submit a Labor Condition Application (LCA) corresponding to the locations where the beneficiary would be employed.

On appeal, counsel for the petitioner submits Form I-290B accompanied by a brief and additional evidence.

As will be discussed below, the AAO finds that the acting director did not err in denying the petition on the basis that the LCA filed to support the petition does not encompass all of the locations where the beneficiary would work during the period requested in the petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1) as follows:

[E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission

Further discussion of the filing requirements for applications and petitions is found at 8 C.F.R. § 103.2(b)(1):

An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by the instructions on the form

In cases where evidence related to filing eligibility is provided in response to a director's request for evidence, 8 C.F.R. § 103.2(b)(12) states:

An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed

The regulations require that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner obtain a certified LCA from the Department of Labor (DOL) in the occupational specialty in which the H-1B worker will be employed. *See* 8 C.F.R. § 214.2(h)(4)(i)(B). The instructions that accompany the Form I-129 also specify that an H-1B petitioner must document the filing of a labor certification application with the DOL when submitting the Form I-129.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from [DOL] that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) states that, when filing an H-1B petition, the petitioner must submit with the petition “[a] certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary.” Thus, in order for a petition to be approvable, the LCA must have been certified before the H-1B petition was filed. The submission of an LCA certified subsequent to the filing of the petition satisfies neither 8 C.F.R. § 214.2(h)(4)(i)(B)(1) nor 8 C.F.R. § 214.2(h)(4)(iii)(B)(1). USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1).

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer’s petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification. . . .*

(Italics added.)

It should be noted that a petition consists of all of the documents submitted with it, and that its content with regard to any particular issue consists not just of entries on the Form I-129 but also of all relevant information within the four corners of the record of proceeding. Therefore, the extent to which the terms of an LCA conform to the terms of an H-1B petition depends upon the totality of relevant information provided within the record of proceeding.

The record of proceeding in the present matter indicates that actual work locations for performance of the beneficiary’s services would be determined by whatever contractual documents specify them.

In the instant case, the petitioner filed the Form I-129 with USCIS on November 5, 2007. The petitioner submitted a certified LCA with the petition dated October 17, 2007 which indicated that the beneficiary's work locations would be Braintree, Massachusetts and Memphis, Tennessee.

The acting director noted that the petitioner was a software consulting company, and therefore issued a request for additional evidence (RFE), which, in part, requested evidence demonstrating the petitioner's business activities for the previous year in the form of business contracts. The director also requested a detailed itinerary for the beneficiary that identified his work sites and the end client for whom he would be rendering his services.

The petitioner's response to the RFE includes a representative sample of contracts and work orders with various clients. The AAO notes that the petitioner's clients are based throughout the United States, thereby suggesting that the beneficiary could be sent to locations not covered by the LCA. As the record of proceedings does not establish all of the locations where the beneficiary would be assigned during the period of intended employment, it is not evident that the LCA submitted with the petition is certified for all of the work locations to which he would be assigned during the LCA's validity period.

The petitioner's response to the RFE includes an April 16, 2008 letter from the [REDACTED] which asserts (1) that the beneficiary had been providing services to International Paper in Memphis, Tennessee, as a consultant on the author's team, since October 2007, and (2) that this project was expected to continue until August 2008. The petitioner further contended that after the expiration of this assignment, the beneficiary's services would be utilized for another one of the petitioner's clients, as yet unspecified.

However, the RFE response also includes a Subcontractor Services Vendor Agreement between the petitioner and [REDACTED] dated July 6, 2007, which outlines the terms of an agreement for contracting the services of information technology personnel. In a related Subcontractor Work Order between the petitioner and [REDACTED] also dated July 6, 2007, the petitioner names the beneficiary as the contractor to work on a project for [REDACTED] from August 13, 2007 through August 12, 2008 in Smyrna, Tennessee – a period overlapping the October 2007 to August 2008 period during which the petitioner claims assignment of the beneficiary to the International Paper project in Memphis. In addition to conflicting with the petitioner's claim that the beneficiary will work for [REDACTED] in Memphis until August 2008, this agreement identified another work site not covered by the LCA submitted with the petition.

The Form I-129 filing requirements imposed by regulation require that the petitioner submit evidence of a certified LCA at the time of the Form I-129's filing. In this matter, the LCA submitted in support of the petition named [REDACTED] as the work sites for the beneficiary. As already noted, the petitioner's response to the RFE also included an agreement with [REDACTED], placing the beneficiary on a work site for [REDACTED] in Smyrna, Tennessee from August 2007 until August 2008. Noting that Smyrna, Tennessee was located approximately 238 miles from Memphis, the director denied the petition, finding that the stated work

locations contained in the LCA did not encompass all of the beneficiary's work locations for the three-year period requested in the petition. On appeal, counsel claims that the Smyrna work order is no longer valid and was submitted in error. Counsel also submits a second work order, also dated July 6, 2007 but signed on October 10, 2007, identifying International Paper as the client for whom the beneficiary would render services, and identifying the work location as Memphis, Tennessee.

The AAO first notes that, while the petitioner filed this petition for the three-year period January 1, 2008 to January 30, 2011, it has submitted no evidence establishing where the beneficiary would be working after the International Paper project. Therefore, even if the AAO were persuaded that the beneficiary would be working at the International Paper project from the petition's filing until August 2008, the petitioner failed to provide evidence establishing where the beneficiary would work from August 2008 until January 30, 2011, the end of the employment period requested in the petition. Accordingly, given the nature of the petitioner's business and the fact that the record of proceeding indicates that the beneficiary is subject to project assignments outside the two areas covered by the LCA filed with the petition, the petitioner has failed to establish that the LCA encompasses the beneficiary's work locations after August 2008. For this reason alone, the petition must be denied for the period extending from the August 2008 end of the International Paper project through the remainder of the intended period of employment specified in the Form I-129.

Next, the AAO finds no probative weight in the petitioner's claim, asserted by counsel on appeal, that the Smyrna-assignment work order "is actually an old work order where the Beneficiary worked prior to the filing of [this] extension petition," and was submitted by mistake. On appeal, counsel contends that, since October 2007, the beneficiary has been working for International Paper in Memphis, Tennessee, and in support of the contention, counsel resubmits the letter from International Paper and newly submits two work orders for the services of the beneficiary in Memphis, Tennessee. However, the petitioner provides no business records and other documentary evidence regarding the actual performance of the Smyrna project to corroborate the claim that the Smyrna project is not relevant to the present petition. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO further finds that the documents submitted with regard to the beneficiary's assignment to International Paper do not resolve the conflict with the contrary evidence indicating that the beneficiary was assigned to the Smyrna project during the same period. Again, the AAO notes the lack of documentary evidence establishing the details of the beneficiary's work on the Smyrna project. Further, the AAO notes that both the Smyrna and the International Paper projects are driven by "time and materials" work orders for consulting services. In the absence of contrary information in the record of proceeding, it appears that the "time and materials" aspects indicate that both work orders could be performed during the same period, though at different locations, provided that the

actual consulting "time" required of the beneficiary by the Smyrna and the International Paper work orders allowed for it. This aspect of the record of proceeding reinforces the material importance of the lack of evidence of the details of the beneficiary's actual activities in the Smyrna project. Further, it is noted that neither the International Paper "time and materials" work order nor the International Paper letter establish that the beneficiary has been continuously assigned to the International Paper project during the entire period covered by both the International Paper and the Smyrna-project work orders.

The AAO also finds that the work order regarding the International Paper project that was signed on June 10, 2008 has negligible evidentiary weight for supporting the petition, but does further undermine the evidentiary significance of the International Paper letter, in that the work order postdates the work order's "start date" of February 15, 2008 by 117 days (or 3 months and 27 days). Further, the AAO need not consider the June 10, 2008 work order as a document in support of the petition in that it is a type of evidence encompassed by, but not provided in response to, the RFE. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). While the AAO notes that the petitioner did submit a letter in response to the request for evidence from International Paper claiming that the beneficiary was one of its consultants, the petitioner failed to submit a copy of a valid work order or agreement to corroborate this statement. Instead, the petitioner submitted a valid work agreement for the beneficiary's services to Vi-Jon, which contradicted the petitioner's claims.

For the reasons discussed above, the AAO shall not disturb the acting director's denial of the petition.

Beyond the decision of the director, it has not been established that the beneficiary would be employed in a specialty occupation. In this regard, it should be noted that an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and

- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 at 387. To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore

be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), 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 AAO here incorporates this decision’s earlier discussions regarding the failure of the petitioner to establish where and for whom the petitioner would be working during the period requested in the petition. Also, the AAO notes that the record of proceeding indicates that the exact nature of the beneficiary’s work and the associated educational requirements would depend upon the substantive demands of the particular projects to which the beneficiary would be assigned. In this regard, the AAO notes that, aside from the limited time covered by them and the evident conflicts between them, the work orders provide only general functional descriptions of the work to be performed. As such, they do not relate how that work correlates with a requirement for, or with highly specialized knowledge usually associated with, at least a bachelor’s degree in a specific specialty.

The AAO notes, for instance, that the petitioner’s response to the RFE provided a laundry list of computer languages, database systems and tools, and operating systems that the beneficiary would use in the United States. In addition, the petitioner claimed that the beneficiary’s responsibilities on a “typical assignment” could be broken down as follows: Understand Requirements (5% of time); Design System (20% of time); Develop/Program System (70% of time); and Test and Deploy (5% of time). Despite the submission of numerous agreements, task orders, and letters from both the petitioner and counsel, the descriptions of the beneficiary’s work do no more than indicate that it may comprise a programmer-analyst position.

To the extent that they are described in the record of proceeding, the duties of the proffered position generally comport with those of a Programmer Analyst as generally described in the “Computer Systems Analysts” chapter of the 2010-2011 edition of DOL’s *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of the occupations that it addresses. However, that chapter’s section on Training, Other Qualifications, and Advancements indicates that neither computer analyst positions generally nor the subset of programmer analyst positions normally require at least a bachelor’s degree, or the equivalent, in a specific specialty closely related to the position’s duties. That section reads:

Training requirements for computer systems analysts vary depending on the job, but many employers prefer applicants who have a bachelor's degree. Relevant work

experience also is very important. Advancement opportunities are good for those with the necessary skills and experience.

Education and training. When hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with graduate degrees are preferred. For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.

Despite the preference for technical degrees, however, people who have degrees in other areas may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation.

Employers generally look for people with expertise relevant to the job. For example, systems analysts who wish to work for a bank may need some expertise in finance, and systems analysts who wish to work for a hospital may need some knowledge of health management. Furthermore, business enterprises generally prefer individuals with information technology, business, and accounting skills and frequently assist employees in obtaining these skills.

Technological advances come so rapidly in the computer field that continuous study is necessary to remain competitive. Employers, hardware and software vendors, colleges and universities, and private training institutions offer continuing education to help workers attain the latest skills. Additional training may come from professional development seminars offered by professional computing societies.

Other qualifications. Employers usually look for people who have broad knowledge and experience related to computer systems and technologies, strong problem-solving and analytical skills, and the ability to think logically. In addition, the ability to concentrate and pay close attention to detail is important because computer systems analysts often deal with many tasks simultaneously. Although these workers sometimes work independently, they frequently work in teams on large projects. Therefore, they must have good interpersonal skills and be able to communicate effectively with computer personnel, users, and other staff who may have no technical background.

Advancement. With experience, systems analysts may be promoted to senior or lead analyst. Those who possess leadership ability and good business skills also can

become computer and information systems managers or can advance into executive positions such as chief information officer. Those with work experience and considerable expertise in a particular subject or application may find lucrative opportunities as independent consultants, or they may choose to start their own computer consulting firms.

As evident above, the *Handbook* does not indicate that programmer analyst positions normally require at least a bachelor's degree in a specific specialty. The *Handbook* only indicates that employers often seek or prefer at least a bachelor's degree level of education in a technical field for this type of position; and, more importantly, the evidence of record regarding the particular position proffered here does not demonstrate requirements for the theoretical and practical application of such a level of highly specialized computer-related knowledge. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish not only that the beneficiary would perform the services of a programmer analyst, but that he would do so at a level that requires the theoretical and practical application of at least a bachelor's degree level of knowledge in a computer-related specialty. This the petitioner has failed to do.

The AAO finds that neither the duty descriptions nor any other evidence of record distinguish the proffered position from those programmer analyst positions which do not require at least a bachelor's degree or the equivalent in a specific specialty closely related to their duties. The record's duty descriptions are generalized and generic and they are not supplemented by any documentation establishing that, as practiced in actual performance in the proffered position, they would require at least a bachelor's degree in a specific specialty.

Further, the AAO finds that the petitioner failed to establish the substantive nature of the work that the beneficiary would actually perform. In light of the fact that this beneficiary's work would be ultimately defined by the specific contractual demands of the petitioner's client's, or clients' clients, it is imperative that the petitioner provide documentation from the end clients that establishes the substantive work that the beneficiary would perform and the nexus, if any, between that work and the H-1B program's statutory requirement that the proffered position require at least a bachelor's degree level of knowledge in a specific specialty. This the petitioner has failed to do, even with regard to the claimed International Paper project; and the petitioner presents no evidence whatsoever with regard to other projects to which the petitioner may be assigned after that project. Without evidence of contracts, work orders, or statements of work describing the duties the beneficiary would perform and for whom, the petitioner fails to establish that the duties that the beneficiary would perform will be those of a specialty occupation. Providing a generic job description (i.e., writing computer programs) that speculates what the beneficiary may or may not do at each worksite is insufficient. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In support of this analysis, USCIS routinely cites *Defensor v. Meissner*, 201 F.3d 384, in which an examination of the ultimate employment of the beneficiary was deemed necessary to determine whether the position constitutes a specialty occupation. The petitioner in *Defensor*, Vintage Health

Resources (Vintage), was a medical contract service agency that brought foreign nurses into the United States and located jobs for them at hospitals as registered nurses. The court in *Defensor* found that Vintage had “token degree requirements,” to “mask the fact that nursing in general is not a specialty occupation.” *Id.* at 387.

The court in *Defensor* held that for the purpose of determining whether a proffered position is a specialty occupation, the petitioner acting as an employment contractor is merely a “token employer,” while the entity for which the services are to be performed is the “more relevant employer.” *Id.* at 388. The *Defensor* court recognized that evidence of the client companies’ job requirements is critical where the work is to be performed for entities other than the petitioner. The *Defensor* court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* In *Defensor*, the court found that evidence of the client companies’ job requirements is critical if the work is to be performed for entities other than the petitioner. *Id.*

For the reasons discussed above, the petition must also be denied for the petitioner’s failure to establish the proffered position as a specialty occupation.

The AAO recognizes that the present petition is for an extension of H-1B classification approved in the previous petition filed by the petitioner on behalf of the beneficiary. However, a prior approval does not preclude USCIS from denying an extension petition based upon its reassessment of the qualifying factors. See *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The acting director's decision does not indicate whether he reviewed the prior approval. If the previous nonimmigrant petition was approved based on the same assertions and evidence as contained in the current record, the approval would constitute material 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 CIS 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 a 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).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.


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