

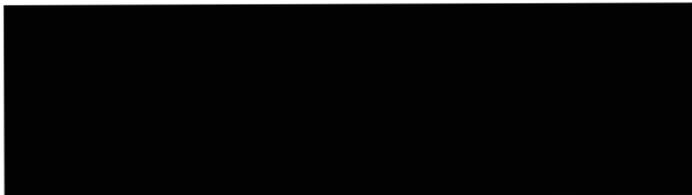
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: WAC 07 059 50436 Office: CALIFORNIA SERVICE CENTER Date **MAR 02 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California 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 computer hardware and software reseller and developer, which claims to have 12 employees. It seeks to employ the beneficiary as a computer marketing analyst 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).¹ The director denied the petition concluding that the petitioner failed to establish that the beneficiary is not qualified to perform services in 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) counsel's response to the director's RFE; (3) the director's denial letter; and (4) Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *See Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988) (“The facts of a beneficiary’s background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].”). Therefore, before discussing the director’s basis for the denial, the AAO will first examine whether the proffered position qualifies as a specialty occupation. Beyond the decision of the director, the AAO finds that the petitioner's proffered position does not qualify as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the 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

¹ In the Form I-129, the petitioner uses the job title of “Computer Research Analyst.” However, the petitioner’s support letter and additional supporting documentation refers to the beneficiary as a “Computer Marketing Analyst.” Therefore, in this decision, the AAO will reference the proffered position as a computer marketing analyst.

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 computer marketing analyst. In the December 9, 2006 letter of support, the petitioner claimed that the beneficiary's duties would be as follows:

- Identify prospects for new business;

- Use demographic material, business models, economic indicators and industry information;
- Develop recommendations for marketing and sales follow-up, prepare detailed network performance and economic customer studies, and direct management in the direction and goals of the company;
- Access competitive computer marketing techniques and models;
- Develop methods for statistical research and implementation of marketing strategic concepts; and
- Assist in the development of the company's strategic plan to be presented at industry marketing events.

The petitioner did not state its minimum degree requirements when the petition was submitted, but the petitioner submitted copies of the beneficiary's education documents and reference letters together with a credential evaluation from [REDACTED], which included a letter written by [REDACTED] of the School of Business Administration at the University of Miami, finding that a combination of the beneficiary's education and experience is equivalent to a U.S. Bachelor's Degree in Business Administration with a major in marketing.

The director's RFE asked for documentation to support a finding that the proffered position is a specialty occupation, including a more detailed job description. The director also asked for documentation regarding the petitioner's business and the beneficiary's current status.

In response to the director's request, counsel included a letter from the petitioner, which described the beneficiary's proffered responsibilities as follows:

He continues to lead and has overall accountability for managing the strategy and business relationship for his computer sales by determining the demand for products and services offered by this firm, its competitors and the identification of potential customers in local, regional, national and targeted international markets. This includes, the coordination and implementation of strategic initiatives ensuring all Sales staff and other affected internal staff have the required information to execute the strategy and provide a high level of customer service and client satisfaction.

His duties include accumulating and researching appropriate marketing material, pricing, buyer needs and habits, changing demographic, local and international market conditions and preferences. This includes the monitoring and analyzing of results that measures actual versus budgeted targets and determines through trend analysis the need to recommend any new products and services or fine tuning of existing ones.

The Sales team works under his initiative to ensure the maximum results. [The beneficiary] also supports all other departments in achieving service, revenue and productivity targets within the line of business through partnering with key external and internal company stakeholders.

He continues to provide ongoing coaching, leadership and development of employees (direct and indirect), in ensuring a high level of employee commitment and capability. His position requires that he work closely with the Sales Manager as well as other teams and team members in developing pricing strategies with the goal of maximizing the

firm's profits, increase market share and ensuring that the customer remains engaged and satisfied.

The petitioner's letter in response to the RFE describes the key position duties and breaks them down as follows:

- Identifies, develops and evaluates marketing strategies based on knowledge of the firm's objectives, market characteristics, market demands and cost and margin factors (inclusive of the cost of credit) – 25% of time;
- Works closely with the sales team in collecting sales information and works independently to conduct research and forecast new product consumption – 20% of time;
- Develops pricing strategies working in conjunction with the Sales Manager to improve Sales and Purchasing and customer satisfaction – 15% of time;
- Formulates, directs and coordinates marketing activities and policies to promote products and services – 20% of time;
- Utilizes market driven tactical plans to achieve sales forecasts and ensure that profit margins are maintained – 10% of time;
- Participates in sales meetings and attends other meetings as required – 5% of time;
- Recommends new or modified strategies and protocols to effect continual improvements in the company's sales strategies – 5% of time.

The petitioner also states in the RFE response letter, "The person holding this position requires as a minimum professional standing with a Bachelor's Degree or equivalent in order to have attained the educational level to perform his duties. . . . His previous experience of working in the banking field, as well as with other companies, serves him well as he possesses a *varied* background and training enabling him to approach his work." (Emphasis added.) Although the petitioner states it requires a degree for the proffered position, the petitioner does not appear to require a bachelor's degree in a *specific specialty*. Additionally, the petitioner cites to the beneficiary's varied background as an example of why the beneficiary is qualified for the position, which implies that a degree in a specific specialty is not required to perform the duties of the proffered position.

In the RFE response letter, the petitioner breaks down the proposed duties with percentages of time to be spent on each, but provides no further explanation or documentation that describes what the beneficiary will be doing and why the proposed duties require the theoretical and practical application of at least a baccalaureate degree's level of highly specialized knowledge in a specific specialty, which characterizes a specialty occupation.

The AAO finds that the proffered position is closest to the description of market research analysts in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The 2010-2011 edition of the *Handbook* does not indicate that entry into positions in that occupation normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. While the *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many market and survey research jobs, it does not indicate that the degrees held by such workers must be in a specific specialty that is directly related to market research, as would be required for the occupational category to be recognized as a specialty occupation. This is evident in

the range of qualifying degrees indicated in the Significant Points section that introduces the *Handbook's* chapter "Market and Survey Researchers," which states: "Market and survey researchers can enter the occupation with a bachelor's degree, but those with a master's or Ph.D. in marketing or a social science should enjoy the best opportunities."

That the *Handbook* does not indicate that market research analyst positions normally require at least a bachelor's degree in a specific specialty is also evident in the following discussion in the "Training, Other Qualifications, and Advancement" section of its chapter "Market and Survey Researchers," which does not specify a particular major or academic concentration:

A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree is usually required for more technical positions.

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take social science courses, including economics, psychology, and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines.

Because the *Handbook* indicates that entry into the market research analyst occupation does not normally require a degree in a specific specialty, which is in accordance with the petitioner's example of not requiring at least a bachelor's degree or equivalent in a specific specialty for the proffered position, 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)).

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. In response to the RFE, counsel for the petitioner provides an Expert Opinion from [REDACTED], Lead Faculty at the University of Phoenix Jersey City Campus in New Jersey. This letter states that:

[C]ompanies seeking to employ a Computer Marketing Analyst require prospective candidates to possess at least a Bachelor's degree in the area of Business Administration, Marketing, or a related field, from an accredited institution of higher learning. The skills, knowledge, and analytical thinking acquired through the acquisition of a Bachelor's degree in Business Administration, Marketing, or its equivalent, is considered necessary by people in the industry seeking to hire a Computer Marketing Analyst, and thus the degree is considered an industry standard requirement for the position.

* * *

Furthermore, the position of Computer Marketing Analyst requires the theoretical and practical application of an advanced highly specialized body of knowledge in the field of Business Administration and Marketing, which requires the attainment of at least a Bachelor's degree or its equivalent, as the minimum requirement for entry into the occupation. The skills required for the position are developed in the junior and senior years of an undergraduate program in Business Administration, Marketing, or a related field.

[REDACTED] does not list the reference materials on which he relies as a basis for his conclusion. It appears that [REDACTED] did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by the petitioner in the RFE response letter. 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).

Moreover, [REDACTED] finds that the proffered position requires the attainment of a bachelor's degree or its equivalent in business administration, marketing, or a related field. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as 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. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558. To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's

degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 189, 2007 WL 1228792 (C.A. 1 (Puerto Rico) 2007).

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 petitioner and counsel did not submit any copies of advertisements or other documentation to evidence that the proffered position requires a degree in a specific specialty. As such, the evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for market research analyst positions, including degrees not in a specific specialty related to market research analysis. Moreover, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than market research analyst positions that can be performed by persons without a specialty degree or its equivalent.

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

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 market-research-analyst positions that are not usually associated with a degree in a specific specialty.

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).

Next, the AAO affirms the director's finding that the petitioner did not submit sufficient documentation to show that the beneficiary qualifies to perform services in any specialty occupation requiring a degree in business administration or a related field under 8 C.F.R. § 214.2(h)(4)(iii)(C). Even though the determination of whether the beneficiary is qualified to perform services in a specialty occupation is relevant only if the proffered position is a specialty occupation, the AAO will examine this issue as it is the basis for the director's decision to deny the petition.

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 does not hold a U.S. degree, nor does he hold a foreign degree. 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 a specific specialty, 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 a specific specialty, as well as recognition of his expertise through progressively responsible positions directly related to this specialty.

As mentioned earlier, in support of the petition, the petitioner provided a credential evaluation written by [REDACTED], which included a letter written by [REDACTED] Associate Dean of the School of Business Administration at the University of Miami, that found a combination of the beneficiary's education and experience to be equivalent to a U.S. bachelor's degree in business administration with a major in marketing.

[REDACTED] letter states that the beneficiary's education and experience amount to the equivalent of a U.S. bachelor's degree in business administration with a major in marketing. This letter, though, does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). [REDACTED] states:

[A]s part of my responsibilities, I am called upon to review college credits earned by transfer students at U.S. and foreign universities. On occasion, I am also asked to grant course waivers based upon work and professional experience. An example would be an individual with substantial experience in the computer field. Such a person might well be waived from a required basic computer course.

However, granting course waivers is not the same as granting college-level credit.

██████████ also indicates that it has been his experience serving on the MBA admission committee that a small percentage of people admitted to the MBA program do not have a bachelor's degree, but instead have substantial work experience in business. However, the record does not contain persuasive evidence that the University of Miami has a program for granting such credit based on an individual's training and/or work experience. For example, there is no correspondence from Miami University's registrar stating that the University of Miami has a program for granting college-level credit based on an individual's training or work experience. Thus, ██████████ letter does not establish the beneficiary's qualifications 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. 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 business administration 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 the beneficiary's former employer does not contain enough detail to determine whether the beneficiary's experience was gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in a specific specialty, as required under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Finally, the record lacks the required showing of the beneficiary's expertise in a specific specialty. Therefore, the AAO affirms the director's decision that the evidence does not establish that the beneficiary is qualified to perform a specialty occupation.

On appeal, counsel for the petitioner argues that the director did not request additional evidence with respect to the beneficiary's qualifications when she issued the RFE.

While an RFE often has the effect of informing the petitioner of deficiencies in the record that may lead to the denial of a petition, its express purpose is to illicit further evidence. Specifically, 8 C.F.R. § 103.2(b)(8)(ii) states the following:

If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

As indicated in the above provision, the director is not required to issue a request for further information in every potentially deniable case, as it is not the purpose of an RFE to inform the petitioner of the potential grounds for denial.

The director was, therefore, not required to issue an RFE in the present-matter. Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner and counsel could have provided the AAO with additional evidence on appeal, such as a new or revised credential evaluation, that demonstrates

the beneficiary is qualified to perform the duties of a specialty occupation under the regulation. Instead, counsel has resubmitted the same documentation with respect to the beneficiary's qualifications that was already in the record from the initial petition filing. Therefore, since counsel did not provide additional evidence on appeal with respect to the beneficiary's qualifications, it is difficult to see how the issuance of an RFE requesting additional documentation with respect to the beneficiary's credentials would have made any difference to the outcome. Moreover, as discussed above, the petitioner has also failed to demonstrate that the proffered position is a specialty occupation, a basis for this decision that was raised by the director in the RFE. Therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

Finally, the AAO notes that the record indicates that the petitioner currently holds H-1B status. The director's decision does not indicate whether she reviewed the prior approval of the other nonimmigrant petition. 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. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are 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 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 affirms the director's decision that the beneficiary is not qualified to perform the duties of a specialty occupation.

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).

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

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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.