

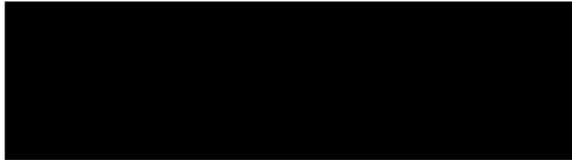
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D2

FILE: EAC 09 113 51953 Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:



APR 04 2011

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Loe
Michael T. Kelly
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 hotel/motel. It seeks to employ the beneficiary as a hotel 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 is a specialty occupation.

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

The primary issue that the AAO will consider is whether the position qualifies 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

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

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

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks to extend the beneficiary’s services as a hotel manager for an additional year pursuant to section 106(a) of the “American Competitiveness in the Twenty-First Century Act” (AC21). The initial letter from the petitioner submitted with the petition stated that the beneficiary would:

*Manage the facility to ensure the efficiency and profitability of the property.
Establish standards for personal administration and performance. Perform*

overall marketing, advertising, and publicity of the property, which involves the selection of the type of patronage to be solicited. Allocate the funds, the authorization of expenditures, and will assist in the planning [sic] the annual budget for the property. Interview, hire and evaluate personnel. Answer patrons complaints and resolve all problems that arise at the property. Periodically inspect guest rooms, public access areas and outside grounds for cleanliness and appearance.

The petitioner also stated that it requires its hotel manager to have at least a bachelor's degree in business administration or the equivalent.

The petitioner submitted a copy of an ETA Form 9089, Application for Permanent Employment Certification, however this document was not certified and no evidence was submitted to demonstrate that this document was ever filed. Therefore, the petitioner failed to submit documentation that the beneficiary is eligible for an H-1B extension beyond six years under AC21. The beneficiary has held H-1B status in the U.S. since March 15, 2001 and the present petition requests that his H-1B status be extended from March 13, 2009 to March 12, 2010.

Additionally, the petitioner submitted a credential evaluation finding that the beneficiary has the equivalent of a U.S. Bachelor of Business Administration through a combination of three years of education and eight years of experience. The petitioner also submitted copies of the beneficiary's foreign transcripts.

On April 9, 2009, the director issued an RFE requesting additional evidence that the proffered position is a specialty occupation, including a more detailed job description and an organizational chart. The RFE also requested additional information regarding the petitioner's business.

In response to the RFE, the petitioner broke down the proffered duties as follows:

- Manage the facility (60% of the time);
- Establish standards for personal administration and performance as well as perform marketing, advertising and publicity of the property (15% of time);
- Interview, hire, train and evaluate personnel (10% of the time);
- Inspect guest rooms, public access areas, and outside grounds for cleanliness and appearance (8% of time);
- Answer patrons' complaints and resolve problems that arise at the property (5% of time); and
- Allocate the funds and authorize expenditures as well as plan annual budget (2% of time).

The petitioner also submitted an expert opinion letter from [REDACTED] of [REDACTED] in College Park, MD. This letter argues that the proffered position is a specialty occupation because it would normally be filled by someone with at least a Bachelor's Degree or the equivalent in Hospitality Management, Business Administration, or a related field. Additionally, [REDACTED] argues that the beneficiary has the equivalent of a U.S. Bachelor's Degree in Business Administration based on a combination of education and experience.

Additionally, the petitioner submitted a copy of its 2008 U.S. Return of Partnership Income and an organizational chart. The organizational chart does not include the proffered title of Hotel Manager, but it has the title of General Manager, which is ascribed to the beneficiary. The General Manager is responsible for supervising a sales & marketing person as well as the front office manager and desk operators along with the hotel's housekeeping and food service staff at the petitioner's hotel/motel.

The director denied the petition, finding that the proffered position is not a specialty occupation.

On appeal, counsel for the petitioner argues that the proffered duties and the opinion letter submitted from ██████████ are sufficient proof that the proffered position is a specialty occupation. Additionally, counsel argues that because the beneficiary had H-1B petitions approved in the past, that this further demonstrates that the proffered position is a specialty occupation.

To make its determination whether the employment qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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

The proffered position appears to come under the *Handbook's* (2010-11 online edition) section on lodging managers. The *Handbook* section on lodging managers describes the nature of this work as follows:

A comfortable room, good food, and a helpful staff can make being away from home an enjoyable experience for both vacationing families and business

travelers. *Lodging managers* make sure that these conveniences are provided, while also ensuring that the establishments are run efficiently and profitably. Most lodging managers work in traditional hotels and motels, but some work in other lodging establishments, such as recreational camps and RV parks, inns, boardinghouses, and youth hostels.

Lodging establishments can vary significantly in size and in the number of services they provide, which can range from supplying a simple in-room television and a continental breakfast to operating a casino and accommodating conventions. These factors affect the number and type of lodging managers employed at each property.

The one person who oversees all lodging operations at a property is usually called a *general manager*. At larger hotels with several departments and multiple layers of management, the general manager and multiple *assistant managers* coordinate the activities of separate departments. . . . In smaller limited-service hotels—mainly those without food and beverage service—one lodging manager may direct all the activities of the property.

Lodging managers have overall responsibility for the operation and profitability of the hotel. Depending on the hotel and the size of its staff, lodging managers may either perform or direct housekeeping, personnel, office administration, marketing and sales, purchasing, security, maintenance, oversight of recreation facilities, and other activities. They may hire and train staff, set schedules, and lend a hand when needed.

Within guidelines established by the owners of the hotel or executives of the hotel chain, lodging managers set room rates, allocate funds to departments, approve expenditures, and ensure that standards for guest service, decor, housekeeping, food quality, and banquet operations are met. Increasingly, lodging managers also are responsible for ensuring that the information technology common in today's hotels is operational. Some lodging managers, often called *revenue managers*, work in financial management, monitoring room sales and reservations, overseeing accounting and cash-flow matters at the hotel, *projecting occupancy levels, and deciding which rooms to discount and when to offer rate specials.*

Front office managers, a category of lodging manager, coordinate reservations and room assignments and train and direct the hotel's front desk staff. They ensure that guests are treated courteously, complaints and problems are resolved, and requests for special services are carried out. At some hotels, they may greet the guests personally and provide them individual attention to see their needs are met. Any adjustments to bills often are referred to front office managers for resolution.

Convention services managers coordinate the activities of various departments to accommodate meetings, conventions, and special events. They meet with representatives of groups or organizations to plan the number of conference rooms to reserve, the configuration of the meeting space, and determine what other services the group will need, such as catering or banquets and audio, visual, or other electronic requirements. During the meeting or event, they resolve unexpected problems and monitor activities to ensure that hotel operations conform to the group's expectations.

Lodging managers may work with hotel sales and marketing directors and public relations directors to manage and coordinate the advertising and promotion of the hotel. They help develop lodging and dining specials and coordinate special events, such as holiday or seasonal specials. They may direct their staff to purchase advertising and to market their property to organizations or groups seeking a venue for conferences, conventions, business meetings, trade shows, and special events.

Lodging managers who oversee the personnel functions of a hotel or serve as human resource directors ensure that all accounting, payroll, and employee relations matters are handled in compliance with hotel policy and applicable laws. They also oversee hiring practices and standards and ensure that training and promotion programs reflect appropriate employee development guidelines.

Computers are used extensively by lodging managers and their assistants to keep track of guests' bills, reservations, room assignments, meetings, and special events. In addition, computers are used to order food, beverages, and supplies, as well as to prepare reports for hotel owners and top-level managers. Many hotels also provide extensive information technology services for their guests. Managers work with computer specialists and other information technology specialists to ensure that the hotel's computer systems, Internet, and communications networks function properly.

Under the section on Training, Other Qualifications, and Advancement, the *Handbook* states that:

[m]ost large, full-service hotel chains usually hire people who have a bachelor's degree in business, hotel, or hospitality management for management trainee positions; however, a liberal arts degree coupled with experience in the hospitality field may be sufficient. *At other hotels, especially those with fewer services, employers look for applicants with an associate degree or certificate in hotel, restaurant, or hospitality management along with experience.*

[Emphasis added.]

The AAO notes that the petitioner's hotel has 20 employees and does not have a restaurant, although it does offer a continental breakfast. Further, the hotel has 100 units. Therefore, the petitioner's hotel is not a large full-service hotel, but instead is a smaller hotel with fewer services. Because the *Handbook* indicates that working as a lodging manager at a hotel that is not part of a large full-service chain does not normally require at least a bachelor's degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation.

Because the evidence in the record of proceeding does not substantiate that the proffered position is one for which there is normally a minimum requirement for a bachelor's degree, or the equivalent, in a specific specialty, 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 alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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.

Again, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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.

The petitioner has not provided any documentation evidencing a common degree-in-a-specific-specialty requirement in positions that are both: (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner.

Again, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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.

As will now be discussed, upon careful review of the letter from [REDACTED] - which opines on the educational requirements for the proffered position, and also upon the beneficiary's qualifications

for the position - the AAO concludes that the letter has no probative value with regard to establishing the proffered position as a specialty occupation. Furthermore, to the extent that it indicates that a bachelor's degree in business administration, without further specification, is sufficient for the position, the letter is affirmative evidence that the proffered position is *not* a specialty occupation. This aspect will be discussed later, below.

At the outset, the AAO finds that neither [REDACTED] evaluation document nor any other evidence in the record of proceeding establishes that [REDACTED] is an authority in the area in which he pronounces his opinion, namely, the hiring requirements for lodging management positions.

Next, [REDACTED] does not cite studies, surveys, any empirical evidence, or any reference materials in support of his opinion about the educational requirements for the proffered position. Further, Dr. [REDACTED] focuses on generic and generalized duty descriptions provided by the petitioner, which, the AAO finds, do not distinguish the proffered position from those positions in the hotel manager occupation that do not require at least a bachelor's degree in any specific specialty, and that do not require the application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The very fact that [REDACTED] attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion. Further, [REDACTED] does not address the authoritative information in the *Handbook* about the educational credentials of hotel managers.

For the reasons discussed above, the AAO finds that [REDACTED] evaluation has no significant evidentiary weight, and that it is not probative evidence on the specialty occupation issue. 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).

Next, the AAO notes that, by submitting [REDACTED] evaluation to support the petition, the petitioner adopts his conclusion about the educational credentials acceptable for the proffered position. In this regard, the AAO notes that [REDACTED] broadens the petitioner's minimum requirement of a bachelor's degree or the equivalent in business administration to a bachelor's degree or the equivalent in hospitality management as well as business administration or a related field. Such a spectrum of acceptable degrees would be 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 (Comm. 1988). 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 139, 147 (1st Cir. 2007).

Therefore, the AAO finds that the letter from [REDACTED] does not establish that the proffered position is a specialty occupation.

The petitioner has 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 evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for lodging manager positions. Moreover, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than lodging manager positions that can be performed by persons without a specialty degree or its equivalent, particularly in parallel positions in organizations similar to the petitioner.

Next, 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 do not indicate that they are more specialized and complex than those of lodging manager positions that are not usually associated with a degree in a specific specialty.

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under 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 failed to demonstrate that the beneficiary is eligible for an H-1B extension beyond six years under AC21. The AAO notes that in general section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4) provides that: “[T]he period of authorized admission of [an H-1B nonimmigrant] shall not exceed 6 years.” However, AC21 removes the six-year limitation on the authorized period of stay in H-1B visa status for certain aliens whose labor certifications or immigrant petitions remain undecided due to lengthy adjudication delays, and broadens the class of H-1B nonimmigrants who may avail themselves of this provision.

As amended by § 11030A(a) of the “Twenty-First Century Department of Justice Appropriations Authorization Act” (DOJ21), § 106(a) of AC21 reads:

(a) EXEMPTION FROM LIMITATION. -- The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. § 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant

alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C. § 1101(a)(15)(H)(i)(b)), if 365 days or more have elapsed since the filing of any of the following:

- (1) Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. § 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. § 1153(b)).
- (2) A petition described in section 204(b) of such Act (8 U.S.C. § 1154(b)) to accord the alien a status under section 203(b) of such Act.

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

- (b) EXTENSION OF H-1B WORKER STATUS--The [Secretary of Homeland Security] shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one-year increments until such time as a final decision is made—
- (1) to deny the application described in subsection (a)(1), or, in a case in which such application is granted, to deny a petition described in subsection (a)(2) filed on behalf of the alien pursuant to such grant;
 - (2) to deny the petition described in subsection (a)(2); or
 - (3) to grant or deny the alien's application for an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence.

Pub. L. No. 107-273, §11030A, 116 Stat. 1836, 1836-37 (2002).

As stated previously, the petitioner did not submit documentation to establish that it filed a labor certification on behalf of the beneficiary. The submitted application for labor certification does not indicate any type of government endorsement or receipt. Therefore, the petitioner has failed to demonstrate that the beneficiary is exempt from the maximum six-year period of stay permitted for H-1B nonimmigrants under section 214(g)(4) of the Act and the petition will be denied for this additional reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, 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). No documentation was submitted from the University of Maryland to

establish that [REDACTED] has the authority to grant credit for training and/or work experience, which is a requirement under the regulation. Therefore, the petitioner failed to submit an evaluation that meets the standard of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

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. If any of the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, it would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

The AAO conducts appellate review on a de novo basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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