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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

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U.S. Citizenship
and Immigration
Services

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[Redacted]

DATE: DEC 05 2011 OFFICE: CALIFORNIA SERVICE CENTER [Redacted]

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:

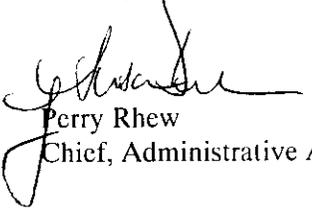
[Redacted]

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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 remain denied.

The petitioner represented itself on the Form I-129 as a software development and consulting company with [REDACTED]. It seeks to employ the beneficiary as a software engineer 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 on the basis of her determination that the petitioner failed to demonstrate: (1) that it qualifies for classification as a United States employer or agent; (2) that it had submitted a certified labor condition application (LCA) valid for all work locations; and (3) that the proposed position qualifies for classification as a specialty occupation. On appeal, counsel contends that the director erred in denying the petition. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition.

In its February 25, 2009 letter of support, the petitioner proposed the following duties for the beneficiary:

- Writing programs, creating a logical series of instructions the computer can follow and applying his knowledge of computer capabilities, subject matter, and symbolic language;
- Coding instructions into programming languages and testing and debugging programs;
- Analyzing, reviewing, and rewriting programs using workflow charts and diagrams;
- Converting detailed logical flow charts into a language that computers can process;
- Preparing flow charts and block diagrams, and encoding resultant equations for processing;
- Developing programs from workflow charts or diagrams, considering computer storage capacity, speed, and intended use of output data;
- Preparing detailed workflow charts and diagrams from programs in order to illustrate the sequence of steps to describe input, output, and logical operation;
- Writing documentation of program development and subsequent revisions;
- Revising or directing the revision of existing programs to increase operating efficiency or adapt to new requirements;
- Consulting with managerial, engineering, and technical personnel to clarify program intent, identify problems, and suggest changes;
- Writing instructions to guide operating personnel during production runs preparing records and reports;
- Collaborating with computer manufacturers and other users to develop new programming methods;
- Assisting computer operators or systems analysts to resolve problems running computer programs;
- Assigning, coordinating, and reviewing the work and activities of programming personnel; and
- Training subordinates in programming and program coding.

The director issued a request for additional evidence (RFE) on April 7, 2009, and requested that the petitioner clarify its employer-employee relationship with the beneficiary. Specifically, the director requested that the petitioner clarify whether it would be acting: (1) as the beneficiary's employer; (2) as an agent performing the function of an employer; or (3) as an agent acting as a representative for multiple employers.

The director notified the petitioner that if it would be acting as the beneficiary's employer, which counsel asserts to be the case, it was to establish that it would hire, pay, fire, supervise, and otherwise control the work of the beneficiary. The director instructed the petitioner to submit evidence that a specialty occupation exists at the petitioner's place of employment, and that there would in fact be an employer-employee relationship. The director also provided a list of the representative types of evidence the petitioner could submit to meet its burden, which included copies of the petitioner's past and present job vacancy announcements; documentary evidence of the petitioner's products or services, such as copies of business plans, reports, presentations, evaluations, recommendations, critical reviews, promotional materials, advertisements, designs, blueprints, newspaper articles, website text, news copy, and photographs of prototypes; documentation of past employment practices to show that the petitioner had met its previous H-1B terms and conditions; and a listing of prior H-1B approvals. The director also gave instructions regarding the types of evidence to be submitted if the beneficiary's employment situation fell under the second or third scenarios set forth by the director.

In response, the petitioner submitted a letter stating that it would be acting as the beneficiary's employer, and that the beneficiary would be working on a project for its client Intuit at the petitioner's headquarters in [REDACTED]. In support of its contention that the beneficiary's employment situation would mirror the first scenario set forth by the director in her RFE – direct employment of the beneficiary – the petitioner submitted a letter stating as such; copies of the beneficiary's Forms W-2 from tax years 2006, 2007, and 2008; evidence that the Department of Labor, Employment and Training Administration certified an application for alien labor certification on behalf of another individual (with subsequent substitution for the beneficiary) in 2006;¹ copies of classified newspaper advertisements apparently placed in connection with that application; and a listing of H-1B petitions approved on behalf of the petitioner.

In her June 11, 2009 denial, the director found the petitioner's response deficient and denied the petition. In our adjudication of this petition, we will turn first to the director's third ground for denying the petition – that the petitioner failed to demonstrate that the proposed position qualifies for classification 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:

¹ We note that at item 7 of the Form ETA 750, Application for Alien Employment Certification, the petitioner stated that the beneficiary of the application would not work at the company's address but rather at various "[c]lient sites in [REDACTED]"

- (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 [1] 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 [2] 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 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 proposed 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.

The record contains evidence indicating that the beneficiary would work at client sites as well as evidence indicating he would work at the petitioner’s place of business. Setting aside the issue of the petitioner’s failure to clarify which scenario would be the case, which alone mandates denial of the petition, we find regardless that the petitioner has failed to demonstrate that the petition would warrant approval under either scenario.

We note that, as recognized by the court in *Defensor v. Meissner*, 201 F.3d at 387, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. The court in that case 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.* at 387-388. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. Although both counsel and the petitioner maintain that the beneficiary would work on the petitioner’s premises, the application for alien labor certification, which the petitioner has apparently used to sponsor the beneficiary’s permanent residency petition, undermines those assertions, as the petitioner specifically stated that on that application that the beneficiary would not work at the company’s address but rather at client sites throughout [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). However, although the petitioner stated that the beneficiary would work at client sites throughout [REDACTED] the record lacks such substantive evidence from any end-user entities that would generate work for the beneficiary and whose business needs would ultimately determine what the beneficiary would actually do on a day-to-day basis. In short, the petitioner has failed to demonstrate the existence of H-1B caliber work for the beneficiary.

The petitioner stated in its RFE response and again on appeal that the beneficiary will work on the petitioner's premises for Intuit, and the beneficiary's resume states that he has been working on a project for Intuit for the petitioner since [REDACTED]. However, the record lacks evidence that there remains any work to be performed by the petitioner for Intuit, as the Statement of Work submitted by the petitioner on appeal provides a "services completion date" of January 16, 2009, or for any other entity. The petitioner, therefore, has failed to demonstrate that when it filed the petition on February 27, 2009, it had secured work for the beneficiary to perform during the requested period of employment. 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). 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).

Moreover, even if the petitioner had demonstrated, which it did not, that the beneficiary will work as a software engineer on the project for Intuit for the duration of the petition, the petitioner has failed to demonstrate that the proposed position is a specialty occupation. First, we find the duties outlined by the petitioner in its letter of support and RFE response vague, overly broad, and generic. The petitioner also failed to describe the beneficiary's duties in specific relation to the petitioner's business. Therefore, based upon the evidence before the director, we would be unable to assess whether an actual position existed for the beneficiary. Providing a generic job description that speculates what the beneficiary may or may not do 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proposed position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proposed position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Second, even if the limited job description submitted by the petitioner had established that the substantive duties of the proposed position were those of a software engineer, the petition would still not be approved, as the petitioner's description would not establish that the position it labels as a software engineer would be of the type to require a bachelor's degree or its equivalent in a specific specialty.

In making our determination as to whether a proposed position qualifies for classification as a specialty occupation, we turn first 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)*, a resource upon which we routinely rely 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)).

The *Handbook* states the following with regard to normal entry requirements for software engineers:

For software engineering positions, most employers prefer applicants who have at least a bachelor's degree and broad knowledge of, and experience with, a variety of computer systems and technologies. The usual college majors for applications software engineers are computer science, software engineering, or mathematics. . . .

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos303.htm> (accessed November 16, 2011). These findings do not indicate that a bachelor's degree or its equivalent in a specific specialty is a normal entry requirement. First, employer *preferences* are not synonymous with minimum hiring *requirements*. Furthermore, even if the *Handbook* did state that "most" employers require a bachelor's degree, or its equivalent, in a specific specialty, such a statement would still not establish the proposed position as a specialty occupation. For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of organizations employing software engineers require at least a bachelor's degree in a specific specialty, it could be said that "most" employers require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proposed here by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

Nor are counsel's citations to the Department of Labor's *Occupational Information Network (O*NET™ Online)* persuasive. *O*NET™ Online* is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as *O*NET™ Online*'s JobZone assignments make no mention of the specific field of study from which a degree must come. As was noted previously, USCIS 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 proposed position. With regard to the Specialized Vocational Preparation (SVP) rating, we note that an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again,

USCIS 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 proposed position. For all of these reasons, the *O*NET™ Online* excerpt is of little evidentiary value.

Thus, even if the limited job description submitted by the petitioner had established that the substantive duties of the proposed position were those of a software engineer, the petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry as required by section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

Nor would the petitioner have satisfied the first of the two alternative prongs at 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, or its equivalent, is common to the petitioner’s industry in positions that are both: (1) parallel to the proposed 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 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proposed position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty. Nor has the petitioner submitted evidence that the industry’s professional associations have made a degree in a specific specialty a minimum requirement for entry. For all of these reasons, the petitioner would not have satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner would also have failed to satisfy 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’s description of the position’s duties are too generalized to establish that they are any more complex or unique than those outlined by the *Handbook*. Accordingly, the evidence of record does not refute the *Handbook*’s information indicating that a bachelor’s degree from a specific field of study is not the normal minimum entry requirement for software engineering positions.

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate it normally requires a degree or its equivalent for the position. To determine a petitioner’s ability to satisfy the third criterion, we normally review its past employment practices, as well as the histories, including the names and dates of employment, of those employees with

degrees who previously held the position, and copies of those employees' diplomas.² However, the record contains no such evidence. Although the record contains evidence that the petitioner has received an approval of an application for alien labor certification, one application is not sufficient to establish a hiring history.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), would have required the petitioner to establish that the nature of its proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty. As previously discussed, the *Handbook* indicates that a baccalaureate degree in a specific specialty is not a normal minimum entry requirement. Given its failure to establish the nature of the duties of the proposed position, the petitioner has failed to differentiate it from the software engineering positions described in the *Handbook* and, as such, has failed to indicate the specialization and complexity required by this criterion. As a result, the petitioner would have failed to establish the proposed position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Accordingly, we agree with the director's determination that the petitioner failed to demonstrate that the proposed position qualifies for classification as a specialty occupation.

Having made that determination, we will briefly address the issue of whether or not the petitioner qualifies as an H-1B employer or agent. As detailed above, the record of proceeding before the director lacked sufficient documentation evidencing what exactly the beneficiary would do for the period of time requested or where exactly and for whom the beneficiary would be providing services. Given this specific lack of evidence, the petitioner has failed to establish who has or will have actual control over the beneficiary's work or duties, or the condition and scope of the beneficiary's services. In other words, the petitioner has failed to establish whether it has made a bona fide offer of employment to the beneficiary based on the evidence of record or that the petitioner, or any other company which it may represent, will have and maintain an employer-employee relationship with the beneficiary for the duration of the requested employment period. See 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). As previously discussed, there was insufficient evidence before the director detailing where the beneficiary would

² Even if a petitioner believes or otherwise assert that a proposed position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any job so long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proposed position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

work, the specific projects to be performed by the beneficiary, or for whom the beneficiary would ultimately perform services.

Finally, we will address whether the petitioner failed to establish that the LCA corresponds to the petition by encompassing all of the work locations and related wage requirements for the beneficiary's full employment period.

In pertinent part, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B) states:

The petitioner shall submit the following with an H-1B petition involving a specialty occupation: (1) A certification from the Secretary of Labor that the petitioner has filed a labor condition application

The regulation at 8 C.F.R. § 103.2(b)(1) states, in pertinent part:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions.

In addition, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1), states, as part of the general requirements for petitions involving a specialty occupation, that:

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

Moreover, while the Department of Labor (DOL) is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining 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.]

As discussed, the record contains evidence indicating that the beneficiary would work at client sites as well as evidence indicating he would work at the petitioner's place of business. The record,

therefore, does not demonstrate conclusively that the beneficiary will be working at a location certified by the LCA for the entire duration of the 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)). In light of the fact that the record of proceeding indicates that the beneficiary may work in locations not identified in the Form I-129 and the LCA filed with it, USCIS cannot conclude that this LCA actually supports and fully corresponds to the H-1B petition. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). 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.* at 248.

Finally, counsel notes that the beneficiary was previously granted H-1B status and that the petitioner has approved other H-1B petitions it has filed. 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 petitions were approved based on the same evidence contained in the current record, their approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 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 eligibility for the benefit sought. *See 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 approved a nonimmigrant petition filed 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 petitioner has failed to demonstrate that it qualifies for classification as a United States employer or agent; that it submitted a certified labor condition application (LCA) valid for all work locations; and that its proposed position qualifies for classification as a specialty occupation.³ Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(H)(i)(b) of the Act and this petition must remain denied.

³ 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 Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will remain 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.