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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

[redacted]

DATE: JAN 2 6 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[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: Although the service center director initially approved the nonimmigrant visa petition she subsequently issued a notice of intent to revoke (NOIR), and ultimately revoked, approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. Approval of the petition will remain revoked.

The petitioner represented itself on the Form I-129 as a nonprofit special education school with approximately 231 employees. It seeks to employ the beneficiary as a "Residential Instructor I" 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 approved the petition on June 15, 2009, with validity dates of June 15, 2009 through March 14, 2012. However, after interviewing the beneficiary, the United States Consulate in Osaka-Kobe, Japan found that the proposed position does not qualify for classification as a specialty occupation and that the beneficiary does not qualify to perform the duties of the position, and refused to grant the visa. The director issued a NOIR on December 1, 2009 and revoked approval of the petition on February 16, 2010.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's NOIR; (3) the petitioner's response to the director's NOIR; (4) the director's decision revoking approval of the petition; and (5) the Form I-290B and supporting documentation. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Authority to Revoke Approval of a Petition

The process for revoking approval of an approved petition on notice is set forth at 8 C.F.R. § 214.2(h)(11) which states, in pertinent part, the following:

> *Revocation of approval of petition.*
>
> (i) *General.*
>
> (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section. . . .
>
> (B) The director may revoke a petition at any time, even after expiration of the petition.
>
> * * *
>
> (iii) *Revocation on notice—*
>
> (A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or

(*2*) The statement of facts contained in the petition was not true and correct; or

(*3*) The petitioner violated terms and conditions of the approved petition; or

(*4*) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or

(*5*) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. . . .

In this particular case, we find that the director's December 1, 2009 NOIR properly placed the petitioner on notice that she intended to revoke approval of the petition within the scope of the revocation-on-notice provisions discussed above. As will be discussed below, we find further that revocation of this petition's approval was proper under 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), because the director's approval of the petition (1) violated paragraph (h) of the cited regulation and (2) involved gross error because the proposed position does not qualify for classification as a specialty occupation.

Pertinent Facts and Procedural History

The petitioner filed the instant petition on June 9, 2009 and, in its June 5, 2009 letter of support, stated that it serves children and young adults with autism by enhancing their independence and enabling them to contribute to society through application of the principles and methodologies of "Daily Life Therapy," which was developed by

The petitioner explained that its residential program, within which the beneficiary would work, "provides a home environment that is designed to teach daily living skills through rigorous intellectual

and physical stimulation," and that the program is "staffed by trained teachers and other educational professionals."

The petitioner proposed employing the beneficiary as a "Residential Instructor I (beginning level)." According to the petitioner, the beneficiary would be engaged primarily in teaching, and in that capacity would provide individual and group education and guidance in daily living, social, and recreational skills, and would help ensure a safe and secure educational environment for students in its residential program. The petitioner stated that the beneficiary would also perform the following tasks:

- Attending to students' personal needs, and assisting them to make better adjustments while teaching them daily living and social skills;
- Developing a positive rapport with students in a group setting;
- Documenting students' daily performance;
- Communicating with other staff members regarding the students;
- Assisting in the development of comprehensive educational plans with well-defined short- and long-term objectives, weekly plans that include activities designed to meet specific educational plan objectives, and quarterly progress reports;
- Developing varied and interesting activities and resources necessary to accomplish established goals;
- Providing the Residential Division Leader, the Residential Assistant Division Leader, and Residential Instructors II with information based upon formal and informal observations of students' developmental concerns;
- Maintaining an organized, updated, cumulative binder for each child;
- Developing and maintaining a physical and psychological environment that motivates and facilitates the development of each student's communication, social, and daily living skills;
- Maintaining his professional skills by attending in-service training, courses, and workshops;
- Participating in orientations and staff meetings; and
- Preparing materials for case conferences and educational conferences.

The petitioner claimed that performance of the duties proposed for the beneficiary requires the attainment of a bachelor's degree in education, behavioral sciences, human services, or a related field.

The petitioner also submitted a February 18, 2009 letter from the Massachusetts Department of Early Education and Care (DEEC) stating that it is the licensing authority for group care facilities in Massachusetts and that it licenses the petitioner. The DEEC stated further that it does not require workers in residential programs, including residential instructors, to possess licensure of any type.

The director approved the petition on June 15, 2009.

As noted, the Consulate declined to issue an H-1B visa to the beneficiary. In a July 7, 2009 electronic mail message (e-mail), the Consulate notified the petitioner that, although a final decision had not been made on whether to grant or deny the visa, "one area of concern was that the job responsibilities as described by the [beneficiary] were a bit different from the descriptions in the petition, to the extent that the officers who handled the interviews felt it was appropriate to consider

whether the jobs actually fulfill the criteria for specialty occupations." The record indicates that when asked to explain the duties he would performing for the petitioner, the beneficiary did not mention, or even allude to, any teaching and educational duties but instead described general childcare responsibilities.

In its July 12, 2009 letter submitted to the Consulate, the petitioner reasserted that the proposed position qualifies for classification as a specialty occupation. The petitioner stated that it is one of only two schools in the world offering the "Daily Life Therapy," described the difficulty it faces in adequately staffing its residential program, and claimed that depriving it of its ability to hire H-1B workers would likely render it unable to meet the staffing mandates prescribed by the Massachusetts Department of Education and therefore necessitate a reduction in the number of students it enrolls.

With regard to the discrepancy between the duties of the proposed position as set forth in the petition and those described by the beneficiary, the petitioner stated that "[n]ewly-hired, entry-level employees should not, before they start work, be expected to be able to describe their anticipated duties in detail," and that the beneficiary's understanding of the duties of the position "is based on no more than an hour of an approximately 3-hour recruiting session." The petitioner also stated that the beneficiary will only "gain a detailed familiarity with [the] specific duties, and an understanding of autism, in an in-depth, two-week orientation and training" which will be conducted subsequent to issuance of the visa and arrival into the United States. The petitioner also submitted information regarding this twelve-day training session in its "Outline for New Residential Staff Training." According to the petitioner, the training builds on an individual's university-level training in education, behavioral sciences, human services, or a related field, and builds on that training to prepare a residential instructor I to apply his or her educational background to the petitioner's unique curriculum.

The Consulate found the petitioner's response insufficient and, in a July 24, 2009 e-mail, notified the petitioner of its opinion that based upon the interview with the beneficiary, it appeared as though the duties he would be performing "would be more accurately be described as those of a 'child care worker' or 'child daycare services' provider. . . ." The Consulate also stated that the February 18, 2009 letter from the DEEC stating that a special education teaching certificate or any other type of licensure is not required serves as further evidence that the proposed position is not a specialty occupation.

The director issued the NOIR on December 1, 2009, and notified the petitioner that during his interview the beneficiary did not state that he would be teaching children, but had instead described childcare duties. As noted by the director, such a position does not normally qualify for classification as a specialty occupation. The director also considered the letter from the DEEC stating that the beneficiary does not require licensure to be further evidence that the proposed position is not a specialty occupation.

In his December 30, 2009 letter, counsel argued that the proposed position is in fact a specialty occupation, and that the beneficiary qualifies to perform its duties. Counsel looked to prior approvals for identical petitions as evidence that the proposed position qualifies for classification as

a specialty occupation; challenged the Consulate's reliance on the beneficiary's description of the duties of the position; and argued that the position's lack of a licensure requirement is not relevant.

The petitioner also submitted a November 5, 2009 letter from the Massachusetts Department of Elementary and Secondary Education (DESE). The letter from the DESE stated that, in general, students are placed in the petitioner's school by public school districts unable to educate them appropriately, and that the DESE encourages it to recruit the most highly educated staff possible. The DESE asserted that "[i]n light of their educational role, it is clear that the School's Residential Instructors are not child care workers or child daycare services providers."

The director found the petitioner's response to the NOIR insufficient, and revoked approval of the petition on February 16, 2010.

On appeal, counsel contends that the director erred in revoking the petition's approval. In her February 28, 2010 letter submitted on appeal, Lesley University, disputes the characterization of a residential instructor I as essentially a childcare worker, and stresses the important role the instructor plays at the petitioner's school. She notes, as does counsel, that although certain childcare duties are in fact performed by residential instructors, such duties would be only a component of the beneficiary's overall job responsibilities. confirms that, in her opinion, the position proposed here is a "professional" one.

Counsel also submits a two-page excerpt from a booklet entitled on appeal, which describes the petitioner's program further.

The Proposed Position Does Not Qualify for Classification as a Specialty Occupation

We concur with the director's finding that the petitioner had not met its burden in demonstrating 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:

> (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 petition proposed by the petitioner does not meet either of the requirements set forth in the statute at section 214(i)(1) of the Act. The petitioner has established that its educational methodology, "Daily Life Therapy," is unique, as it is one of only two schools in the world to utilize it. It is not necessary that a candidate for the proposed position have any experience teaching or working with children with autism, and counsel indicates on appeal that it is not necessary for a candidate to even have an *understanding* of autism prior to commencing employment. Instead, a candidate for the position would receive training in "Daily Life Therapy" methodologies upon arriving in the United States. Furthermore, the petitioner finds acceptable a wide range of degrees for its position: education, behavioral science, human services, and international studies.[1] Given all of this information, the record indicates that the "body of knowledge" that a residential instructor I would theoretically and practically apply would come primarily from the petitioner's training in the techniques of "Daily Life Therapy," and not from any particular course of undergraduate study. However, the record indicates that the "Daily Life Therapy" training consists of a 12-day training program completed by candidates immediately prior to commencing their employment with the petitioner. Given the fact that this training lasts 12 days, the petitioner has not established that this "body of knowledge" is in fact "highly specialized" as required by section 214(i)(1)(A) of the Act.

Nor does the proposed position meet the second requirement of section 214(i)(1) of the Act: that the position requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States. As noted, the petitioner finds acceptable undergraduate degrees in education, behavioral science, human services, and international studies. However, education, behavioral science, human services, and international studies do not constitute a single, specific body of knowledge or study. As such, the petitioner has not satisfied section 214(i)(1)(B) of the Act, either.

As the proposed position does not qualify for classification as a specialty occupation under section 214(i)(1) of the Act, the petition may not be approved. However, even if that were not the case, the position would still not qualify as a specialty occupation under the regulatory criteria, either. In making our determination as to whether the 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 *Handbook* 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

[1] On appeal, counsel submits a memorandum of law in which he states that the petitioner hopes to fill another residential instructor I position with a candidate who possesses a degree in international studies.

"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 rely simply upon a proposed position's title. The specific duties of the 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 beneficiary, 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 a specific specialty* as the minimum for entry into the occupation, as required by the Act.

The relevant evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*). The petitioner makes no comparison of the duties of the proposed position to any of those contained in the *Handbook*, and we find no direct parallels, either. The *Handbook*, therefore, does not aid the petitioner in establishing its position as a specialty occupation. Nor has the petitioner submitted any evidence to demonstrate that any professional associations of residential instructors exist and, if so, whether they have made a degree in a specific specialty a minimum entry requirement. While the record does contain letters from individuals in the industry stating that a degree is required, they do not state that the degree must come *from a specific specialty*.

The petitioner has failed to establish that residential instructor I positions typically require a minimum of a bachelor's degree or the equivalent *in a specific specialty*. The petitioner has not, therefore, 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).

We turn next to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The petitioner has not 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; 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 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. Nor has the petitioner submitted any information regarding parallel positions in similar organizations. For all of these reasons, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

We also conclude that the record does not establish that the proposed position is a specialty occupation under 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." As discussed, the petitioner's submissions indicate the beneficiary will obtain the skills he needs to perform the duties of the position during a 12-day training period. While we do not discount the complexity of "Daily Life Therapy" methodologies, the petitioner has not demonstrated that a bachelor's degree, or its equivalent, *in a specific specialty*, is a prerequisite to successfully working with those methodologies.

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which requires that the petitioner demonstrate that 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 the petitioner's 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. Furthermore, although the petitioner does state that it requires a bachelor's degree, the relevant evidence does not establish that the degree must come *from a specific specialty*. Again, education, behavioral science, human services, and international studies do not constitute a single, specific body of knowledge or study. Accordingly,

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[2] Even if a petitioner believes or otherwise asserts 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.

the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

The fourth criterion, located at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), requires 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 a specialty. Again, the petitioner's submissions indicate that the beneficiary will obtain the skills he needs to perform the duties of the position during a 12-day training period, and the petitioner has failed to make a connection between the performance of those skills and a degree in any specific specialty. The record fails to establish that the proposed position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

Finally, we agree that the lack of a teaching licensure requirement supports a finding that the proposed position is not a specialty occupation. While certainly not dispositive, the fact that the teaching duties affiliated with the proposed position are not viewed by any licensing body as worthy of licensure lends additional weight to a finding that they are not those of a specialty occupation.

With regard to the prior approvals counsel states that USCIS has granted for similar positions in the past, we note that 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 proposed position does not qualify for classification as a specialty occupation under any of the regulatory criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*)-(*4*). Thus, even if the proposed position qualified for classification under the statutory criteria set forth at section 214(i)(1) of the Act, which it clearly does not, it still would not qualify as a specialty occupation because it does not meet any of the regulatory criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*)-(*4*)

The Beneficiary's Qualifications To Perform the Duties of The Proposed Position

The director also found the beneficiary unqualified to perform the duties of the proposed position. However, a beneficiary's credentials to perform the duties of a proposed position are relevant only when that position is found to be a specialty occupation. As discussed in this decision, the proposed position does not require a bachelor's or higher degree, or its equivalent, in a specific specialty. Accordingly, the AAO need not and will not address the beneficiary's qualifications further.

Conclusion

The petitioner has failed to demonstrate that the proposed position qualifies for classification as a specialty occupation, and the director properly revoked approval of the petition on that basis.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed. Approval of the petition remains revoked.