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



U.S. Citizenship  
and Immigration  
Services

Date: **APR 01 2013** Office: VERMONT SERVICE CENTER FILE: [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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, revoked the previously approved nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition's approval will remain revoked.

On the Form I-129 petition, the petitioner claims to be a costume jewelry importer and designer seeking to employ the beneficiary as a communications analyst as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director revoked the petition in accordance with the provisions of 8 C.F.R. § 214.2(h)(11)(iii)(A), noting that an administrative site visit to the claimed work location of the beneficiary demonstrated that the beneficiary was not employed in the capacity specified.

After issuance of a Notice of Intent to Revoke (NOIR) and review of the petitioner's submissions in response to this notice, the service center director revoked approval of the petition on January 11, 2012.

The AAO turns first to the basis for the director's revocation, and whether this basis provided the director with sufficient grounds for revoking the H-1B petition under the language at 8 C.F.R. § 214.2(h)(11)(iii)(A), the regulation outlining the circumstances under which an H-1B Form I-129 petition's validity will be rescinded on notice.

The regulation at 8 C.F.R. § 214.2(h)(11)(iii), which governs revocations that must be preceded by notice, states:

(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 or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; 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. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

The AAO finds that the content of the NOIR comported with the regulatory notice requirements, as it provided a detailed statement that conveyed grounds for revocation encompassed by the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A), and allotted the petitioner the required time for the submission of evidence in rebuttal that is specified in the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(B). As will be discussed below, the AAO further finds that the director's decision to revoke approval of the petition accords with the evidence in the record of proceeding (ROP), and that neither the response to the NOIR nor the submissions on appeal overcome the grounds for revocation indicated in the NOIR. Accordingly, the AAO shall not disturb the director's decision to revoke approval of the petition.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's NOIR, dated September 1, 2010; (3) the petitioner's response to the NOIR dated September 30, 2010; (4) the director's January 11, 2012 notice of revocation (NOR); and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

A brief summary of the factual and procedural history between the approval and the decision revoking it follows below.

On April 28, 2009, the petitioner filed the Form I-129 (Petition for a Nonimmigrant Worker) to continue its employment of the beneficiary in H-1B classification for the period from October 1, 2009 to October 1, 2012. The director initially approved the petition. Upon receipt of new information made available to U.S. Citizenship and Immigration Services (USCIS) after an administrative site visit, the director issued an NOIR on September 1, 2010. Specifically, the director noted that the petitioner, which claimed to be a costume jewelry importer and distributor, was employing the beneficiary in a part-time position similar to that of an office clerk, which was comprised of duties such as email, phone contact and communications with warehouses in New Jersey and suppliers in Korea. Noting that the petition had been approved for the full-time position of communications analyst, the director afforded the petitioner the opportunity to respond to the stated grounds for revocation.

In a response dated September 30, 2010, former counsel for the petitioner addressed the issues identified by the director. Former counsel contended that, contrary to the director's contentions, the position was erroneously classified as an office clerk based on the beneficiary's "simple statement" that he is responsible for all communications matters at the petitioner's company. Counsel asserted that the beneficiary was in fact employed as a communications analyst as claimed on the petition, and was responsible for "managing and maintaining all communication systems at the company, such as

telephones, emails, and internal network system.” Counsel further claimed that “[h]e establishes an effective network system that the company needs, tests the operations of various hardware, and determines, order, or installs additional equipments [sic]. He also conducts research on new software and trains other employees on new products.”

In addition, counsel submitted copies of the beneficiary’s work product, including invoices for various hardware and software products ordered by the beneficiary in order to maintain and upgrade the petitioner’s network systems as needed. Counsel also submitted an affidavit by the beneficiary and a letter from the company’s president addressing discrepancies conveyed to the site inspector during the administrative site visit. Finally, a copy of the petitioner’s organizational chart and a letter from the petitioner’s current office clerk were submitted.

The director found the petitioner had failed to overcome the concerns outlined in the NOIR, and on January 11, 2012, the director sent a decision revoking approval of the petition. The director found that, contrary to counsel’s assertions, there was insufficient evidence to establish that the beneficiary was performing the duties of a communications analyst, for which the petition was initially approved. The director concluded, based on the information submitted in response to the NOIR, that the position held by the beneficiary was not that of an office clerk, as originally thought, but more akin to that of a computer network, systems, and database administrator. The director also found that the change in the duties and position title rendered the Labor Condition Application (LCA), which accompanied the petition and was certified for the position of communications analyst, invalid for purposes of supporting the beneficiary’s actual employment.

On appeal, newly-retained counsel for the petitioner provides a brief in which he asserts that the revocation was erroneous, and bases this contention on the claim that the ultimate basis for revocation differed from the issues raised in the NOIR. Specifically, counsel asserts that the NOIR notified the petitioner that the petition was subject to revocation based on evidence that the beneficiary was not employed in the specialty occupation position of communications analyst, but rather that of an office clerk. Noting that the petition was ultimately revoked based upon a finding that the beneficiary was employed in a specialty occupation position akin to that of a computer network, systems, and database administrator, an occupational category demanding a higher prevailing wage than the proffered position of communications analyst, counsel concludes that the discrepancies between the proposed basis for revocation and the ultimate basis upon which the petition’s approval was revoked render the decision erroneous. Counsel concludes that the proffered position of communications analyst, for which the petition was initially approved is and remains a specialty occupation in which the beneficiary is employed.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO will review the entire record to determine whether the revocation of the petition was appropriate based on the petitioner’s failure to demonstrate that the beneficiary was employed in a specialty occupation position and was being paid the proper wage.

In a letter of support dated April 1, 2009, the petitioner claimed to require the services of the beneficiary as a communications analyst at an annual, full-time salary of \$28,500 and requested an extension of the previously-approved petition for an additional three years. Regarding the position, the petitioner stated:

In this position, [the beneficiary] will be responsible to manage and coordinate all communications systems and activities of our company. Specifically, he will install and maintain equipment for our company's private communications system, recommend network communications equipments [sic] and other configuration services, and document system performance. He will also collect, evaluate, and report data in order to manage communications. In performing these various duties, [the beneficiary] will act mostly in an unsupervised capacity, answering directly to our company's president.

The director initially approved the petition on June 26, 2009. However, after a post-adjudicative site visit was conducted on October 5, 2009, it was determined that the beneficiary was not actually employed in the capacity claimed in the petition. Specifically, the petitioner's president, [redacted], and the beneficiary advised the site inspector that the beneficiary's duties included email, phone contact, and communication with the warehouse in New Jersey and suppliers in Korea, which appeared to be akin to the duties of an office clerk.

After articulating these findings in the NOIR, the director afforded the petitioner the opportunity to respond. In a response dated September 30, 2010, former counsel for the petitioner addressed the director's concerns, claiming that the beneficiary was in fact employed as a communications analyst and not an office clerk. Counsel asserts that the beneficiary's "simple statement" in which he claimed to be responsible for communications was misinterpreted and thus led to the conclusion that the proffered position was a lower-level office clerk position. Former counsel asserts that the beneficiary's limited English led to this misunderstanding, and in support of this contention, an affidavit from the beneficiary and letter from the petitioner's president were submitted to clarify the exact nature of the beneficiary's duties.

The beneficiary's translated affidavit dated September 24, 2010 states in relevant part as follows:

My job duties are managing and maintaining all communication systems at the company. The company that I currently work for specializes in custom producing and distributing jewelry to various countries around the world through their New York office and their warehouse in [New] Jersey. Therefore, it is very important to have efficient communications between our company's sales managers and buyers, and also to have well maintained and effectively transferred database regarding the company's sales and inventory records. The company also has a warehouse in New Jersey of substantial size, so it is absolutely necessary to keep correct data communications in that regard. I majored [in] Telecommunications Systems Management at [redacted], and based on this specialized knowledge, I am in charge of managing all the communications systems at the company such as telephones, emails, and internal network system, and I also make sure that no data is lost in the process. I establish an effective network system that the company needs, I test the operations of various

hardware, and also determine, order, and install additional equipments [sic] as necessary. Also, I research more effective communication systems or new software and train other employees of any new products. I receive direct supervision from the president of the company in performing my duties, and the president of the company also makes determination on investments or changes of the company's communications or network system based on my recommendations.

The beneficiary went on to state that English is not his native language, and that he answered the site inspector's brief questions truthfully regarding the nature of his work. The petitioner also submitted a statement from its president corroborating the beneficiary's claimed duties, as well as a letter from [REDACTED], the petitioner's current office clerk, who claims that his duties encompass those of an office clerk for the petitioner.

The explanations submitted by the beneficiary and the petitioner, which claim that the language barrier may have precluded the site inspector from understanding the true nature of the position are not reasonable and remain unsupported by the evidence of record. The petitioner claims that the beneficiary graduated from a United States institution of higher education, i.e., [REDACTED], and earned a bachelor's degree in telecommunications systems management. There is no evidence, for example, that admission to [REDACTED] baccalaureate degree programs does not require evidence of English language proficiency, such as the attainment of a particular score on the Test of English as a Foreign Language exam (TOEFL). Further, it is not credible that the beneficiary's English language skills would prevent him from fully understanding and answering the site inspector's questions after actual attainment of a U.S. bachelor's degree and residence in the United States at that time of at least eight years.

There are also other credibility and evidentiary deficiency issues that draw into question the veracity of any claims made by the petitioner and beneficiary. For example, the petitioner claimed on the Form I-129 that it had 5 employees and a gross annual income of \$3 million and, yet, the organizational chart submitted in response to the NOIR implies that the petitioner has 13 employees and an unsigned, 2009 tax return shows gross income of approximately \$1.6 million. There is no evidence in the record, such as W-2s and quarterly wage reports, corroborating the petitioner's employment of any employees. Nor is there evidence of ownership of or a lease of a warehouse facility. Based on jewelry inventories of only \$412,100, it remains unexplained and uncorroborated why the petitioner even requires a warehouse and four stockroom clerks. Moreover, despite the director's indication that the beneficiary was not being paid the required wage, the petitioner has failed to even address or refute this additional ground of revocation, by providing such evidence as a W-2 issued to the beneficiary showing that he was in fact paid at least \$28,500 per annum as required by the terms and conditions of the approved petition.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's

assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the claims of the beneficiary's actual duties are not credible. Accordingly, the petitioner has not overcome the director's NOR and established the beneficiary's eligibility for the requested nonimmigrant visa classification. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The AAO acknowledges counsel's assertions on appeal that the proffered position is in fact akin to the occupational category of "Computer Support Specialist." While evidence presented indicates that some of the beneficiary's duties may involve tasks of a computer support specialist, there is insufficient, credible evidence to indicate that the beneficiary would perform these duties on a full-time basis, especially in light of the results of the site inspector's findings. In any event, even assuming arguendo that the proffered position is that of a full-time computer support specialist, the petition would still have to be revoked as there is insufficient evidence in the record to support that that particular position qualifies as a specialty occupation.

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

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] 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 [(2)] 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, a proposed 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), 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), it must be established that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. A review of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an

authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses, states as follows with regard to the educational requirements for computer support specialists:

Because of the wide range of skills for different computer support jobs, there are many paths into the occupation. A bachelor's degree is required for some computer support specialist positions, but an associate's degree or postsecondary classes may be enough for others. After being hired, many workers enter a training program that lasts for several months.

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Training requirements for computer support specialists vary, but many employers prefer to hire applicants who have a bachelor's degree. More technical positions are likely to require a degree in a field such as computer science, engineering, or information science, but for others the applicant's field of study is less important. Some lower level help-desk jobs or call-center jobs require some computer knowledge, but not necessarily a postsecondary degree.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Computer Support Specialists," <http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-4> (last visited March 12, 2013).

According to the *Handbook*, a bachelor's degree or higher in a specific specialty is not required for entry into the proffered position. Although it indicates that bachelor's degrees are often preferred by employers, it also indicates that an associate's degree or postsecondary classes may be sufficient. Therefore, the proffered position cannot be deemed a specialty occupation under the first 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.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* or, in this case, *O\*Net Online* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide, standard requirement of at least a bachelor's degree in a

specific specialty or its equivalent for entry into the occupation. Moreover, the record contains no evidence establishing that an industry-wide, standard requirement of at least a bachelor's degree in a specific specialty or its equivalent exists for entry into the occupation. The petitioner, therefore, has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a bachelor's or higher degree in a specific specialty or its equivalent can perform the duties associated with the position. The test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area directly related to the duties and job responsibilities of that particular position. The statements regarding the duties of the proffered position provided by the beneficiary, the petitioner, and both former and newly-retained counsel fail to explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty-degreed employment. The petitioner has thus failed to establish either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The record contains no evidence that the petitioner currently or has previously employed other persons in the proffered position. Since the record is devoid of sufficient evidence that the petitioner currently or previously hired and employed directly-related, specialty, baccalaureate-degreed or equivalent individuals to fill the proffered position and that the duties of the position actually required such an individual to perform them, the petitioner has failed to satisfy this criterion.

The AAO further notes that while a petitioner may believe or otherwise assert that a proffered 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 self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, 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 employment practices.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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 in a specific specialty, or its equivalent.

The petitioner has submitted no independent documentation in support of the contention that specialized and complex knowledge is required to perform the duties of the proffered position. The petitioner, former counsel, and newly-retained counsel simply provide their own unsupported opinions with regard to the qualifications necessary for a computer support specialist to successfully function in

the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. Relative specialization and complexity have not been developed for the proffered position and, as such, the evidence of record does not establish that this position is significantly different from computer support specialists that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, to the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge usually associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

The petitioner noted that USCIS approved a prior petition on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the 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).

In addition, as indicated above, the petitioner has failed to address or refute the director's second basis for revoking the petition, i.e., the petitioner's failure to establish that it paid the beneficiary the wage required. As indicated above, the petitioner did not provide such evidence as pay stubs, W-2s, quarterly wage reports, 1040s, or other financial documentation showing that the beneficiary was in fact paid at least \$28,500 per annum as required by the terms and conditions of the approved petition. Absent this evidence, it cannot be found that the petitioner has overcome this additional ground for the revocation of the instant petition. Therefore, the AAO need not and will not further address additional deficiencies in the supporting Labor Condition Application (LCA) relevant to the occupational code it was certified for (i.e., 189 – belonging to miscellaneous managers and officials and not computer support occupations), the wage for which it was certified for, and the lack of evidence that this LCA in fact corresponds to the claimed position of computer support specialist (which required a minimum, Level I prevailing wage at that time of \$37,461 per annum).

Pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), an approved petition is revocable if the approval of the petition violated paragraph (h) of this section or involved gross error. In this matter, the proffered position is not a specialty occupation and therefore was initially approved in error by the director. A petition may also be revoked on notice pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(3) due to the

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petitioner's violation of the terms and conditions of the approved petition. Here there is insufficient evidence that the petitioner employed the beneficiary in the position initially authorized and in accordance with the hours and wages required pursuant to that approved petition.

For the reasons set forth above, the petitioner has failed to overcome the bases for revocation in this matter. Therefore, the appeal will be dismissed and the petition will remain revoked.

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's approval is revoked.

**FURTHER ORDERED:** The director shall review the subsequently-approved H-1B petition filed on behalf of the beneficiary [REDACTED] for possible revocation in accordance with 8 C.F.R. § 214.2(h)(11)(iii).