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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 0 2 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

For Michael T. Kelly
Ron Rosenberg
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 be denied.

On the Form I-129 visa petition, the petitioner describes itself as a six-employee sports clothing and trading company[1] established in 2004. In order to employ the beneficiary in what it designates as a full-time operations and development manager position at a salary of $68,100 per year,[2] the petitioner seeks to classify him 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 denied the petition, concluding that the petitioner failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

At the outset, the AAO finds that the petitioner provided as the supporting Labor Condition Application (LCA) for this petition an LCA which does not correspond to the petition, in that the LCA was certified for a wage level below that which is compatible with the levels of responsibility, judgment, and independence the petitioner claimed for the proffered position through its descriptions of its constituent duties.[3] This aspect of the petition undermines the credibility of the petition as a whole and any claim as to the proffered position or the duties comprising it as being particularly complex, unique, and/or specialized.

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[1]The petitioner provided a North American Industry Classification System (NAICS) Code of 448110, "Men's Clothing Stores." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "448110 Men's Clothing Stores," http://www.census.gov/cgi-bin/sssd/naics/naicsrch (accessed Sep. 5, 2013).

[2] The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "General and Operations Manager" occupational classification, SOC (O*NET/OES) Code 11-1021, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

[3] The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified this issue.

I. The Petitioner and its Proffered Position

In its May 17, 2012 letter of support, the petitioner described the proffered position as follows:

> As the Operations and Development Manager, [the] Beneficiary will run the day-to-day operations of various retail stores. His role is to find ways to make the company more productive by providing effective methods in its business operations. He shall assist with the preparation of retail store budgets, control inventory, handle logistics and interview and supervise employees. He shall assist to [sic] improve the operational systems, processes and policies in support of [the] organization's mission – specifically, [to] support better management reporting, information flow and management, business process and organizational planning. . . .

The petitioner claimed that the beneficiary would perform the following tasks:

- Providing a work environment that engenders positive energy, creativity, and teamwork among employees;
- Reaching compromises with employees by conducting meetings, listening to their issues and concerns, and setting a professional example by showing leadership qualities;
- Increasing the effectiveness of efficiency of support services through improvements to each function (e.g., human resources, finance) and improving coordination and communication between functions;
- Driving initiatives that contribute to long-term operational excellence;
- Providing consulting services on matters related to tax and insurance, business structure, and growth;
- Hiring and supervising employees;
- Resolving problems concerning employees' work performance;
- Establishing rules and procedures and creating work schedules;
- Contributing to short- and long-term organizational planning and strategy as a member of the petitioner's management team;
- Setting rules and policies for employees to follow;
- Handling issues including risk management, shipment delays, dissatisfied clients, and employee problems;

- Making effective decisions that will not only help the company run smoothly in the present but will also serve to prevent difficult situations in the future;
- Serving as the primary company liaison to legal counsel in addressing legal issues such as copyright, licensing, etc.;
- Overseeing organizational insurance policies;
- Overseeing monthly and quarterly assessments and forecasts of the organization's financial performance;
- Reconciling monthly activity, generating year-end reports, and fulfilling tax-related requirements;
- Assisting in the creation of annual budgets and monitoring cash flow;
- Overseeing payroll, employee benefits, and organizational insurance;
- Assisting in the maintenance and monitoring of all accounting systems and procedures, and capturing all pledges, billings, and receipts;
- Recording all revenue transactions, and recommending and implementing improvements to systems; and
- Handling the company's operating budget and determining how much the company has spent and what it can purchase in the near-future.

II. The LCA Submitted by the Petitioner in Support of the Petition

The record contains several claims regarding the complexity and specialization of the duties of the proffered position. For example, in its May 17, 2012 letter of support the petitioner stated, in relevant part, the following:

> [The beneficiary] shall be part of company management. He shall exercise wide latitude in discretionary decision-making and shall receive only general supervision or direction from higher-level executive[s][.]
>
> * * *
>
> As the Operations and Development Manager, [the] Beneficiary will run the day-to-day operations of various retail stores . . . He shall play a significant role in long-term planning, including an initiative geared toward operational excellence.

In her August 30, 2012 letter counsel repeated the petitioner's claims with regard to the "wide latitude in discretionary decision-making" that the petitioner would grant to the beneficiary and that he would receive "only general supervision." Additionally, counsel made the following claims:

> The present offered job thus often requires the person to do complex analysis, data processing, application of financial models and mathematical principals [sic]. [The position] also require[s] very advanced communication and organizational skills.

Counsel repeats these assertions on appeal.

These assertions conflict materially with the wage level designated in the LCA that the petitioner submitted with the petition. As noted above, the LCA submitted by the petitioner in support of the instant position specifies the occupational classification for the position as "General and Operations Manager," SOC (O*NET/OES) Code 11-1021, at a Level I (entry-level) wage. The *Prevailing Wage Determination Policy Guidance*[4] issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

> **Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The assertions of record regarding the proposed duties' level of complexity and specialization, as well as the level of independent judgment and responsibility and the occupational understanding required to perform them, are materially inconsistent with the petitioner's submission of an LCA certified for a Level I, entry-level position. The LCA's wage level (Level I, the lowest of the four that can be designated) is only appropriate for a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels quoted above, this wage rate is appropriate for positions in which the beneficiary is only required to have a basic understanding of the occupation; will be expected to perform routine tasks requiring limited, if any, exercise of judgment; will be closely supervised and have her work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the assertions regarding the proffered position's level of responsibility within the petitioner's hierarchy. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It

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[4] Available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf (accessed Sep. 5, 2013).

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).

It should be noted that, for efficiency's sake, the AAO's discussion and findings regarding the material conflict between assertions in the petition and the LCA wage-level are hereby incorporated as part of this decision's later analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The U.S. Department of Labor (DOL) has clearly stated that its LCA certification process is cursory, that it does not involve substantive review, and that it makes the petitioner responsible for the accuracy of the information entered in the LCA. With regard to LCA certification, the regulation at 20 C.F.R. § 655.715 states the following:

> *Certification* means the determination by a certifying officer that a labor condition application is not incomplete and does not contain obvious inaccuracies.

Likewise, the regulation at 20 C.F.R. § 655.735(b) states, in pertinent part, that "[i]t is the employer's responsibility to ensure that ETA [(the DOL's Employment and Training Administration)] receives a complete and accurate LCA."

Further, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) also makes clear that certification of an LCA does not constitute a determination that a position qualifies for classification as a specialty occupation:

> Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H–1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While 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 (emphasis added):

> 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.

As previously noted, the conflict between the LCA and the petition adversely affects the merits of the petition, because it materially undermines the credibility of the petition's statements with regard to the nature and level of work that the beneficiary would perform.

III. Specialty Occupation

Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes 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).[5] To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *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 determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered 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

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[5] The AILA memorandum submitted by counsel appears to argue that a degree in a specialty is not required. The AAO disagrees. As noted, such an interpretation would result in a position which does not satisfy the statutory or regulatory definition of a "specialty occupation" nonetheless qualifying as a specialty occupation because it meets a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A), which would be an illogical and absurd result.

as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree *in the specific specialty* as the minimum for entry into the occupation, as required by the Act.

The AAO will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.[6] Counsel argues that the duties of the proffered position combine those of two occupational categories described in the *Handbook*: (1) Top Executives; and (2) Training and Development Managers.

As a preliminary matter, the AAO finds that, contrary to counsel's argument, the evidence of record is not sufficient to establish that the asserted training and development functions of the proffered position are so broad and substantial that they would constitute a position that would, in part, qualify as a position within the Training and Development Managers occupational group as discussed in the *Handbook*. That being said, the AAO will nevertheless analyze the proffered position as if it were an amalgam of a position within the Top Executives occupational group and one within the Training and Development Managers occupational group. The AAO will do this in order to show why counsel's contention regarding a dual-occupation position would have no effect on the outcome of this appeal, even if that contention had merit – which is not the case.

The *Handbook's* discussion of the duties typically performed by persons within the Top Executives occupational group, states, in pertinent part, the following:

> Top executives devise strategies and policies to ensure that an organization meets its goals. They plan, direct, and coordinate operational activities of companies and public or private-sector organizations. . . .
>
> Top executives typically do the following:

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[6] The *Handbook*, which is available in printed form, may also be accessed online at http://www.stats.bls.gov/oco/. The AAO's references to the *Handbook* are from the 2012-13 edition available online.

- Establish and carry out departmental or organizational goals, policies, and procedures
- Direct and oversee an organization's financial and budgetary activities
- Manage general activities related to making products and providing services
- Consult with other executives, staff, and board members about general operations
- Negotiate or approve contracts and agreements
- Appoint department heads and managers
- Analyze financial statements, sales reports, and other performance indicators
- Identify places to cut costs and to improve performance, policies, and programs

The responsibilities of top executives largely depend on an organization's size. For example, an owner or manager of a small organization, such as an independent retail store, often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties. In large organizations, on the other hand, top executives typically focus more on formulating policies and strategic planning, while general and operations managers direct day-to-day operations.

The following are examples of common types of top executives:

Chief executive officers (CEOs), who are also known by titles such as ***executive director***, ***president***, and ***vice president***, provide overall direction for companies and organizations. CEOs manage company operations, formulate policies, and ensure goals are met. They collaborate with and direct the work of other top executives and typically report to a board of directors.

Companies may also have chief officers who lead various departments or focus on specific areas of work:

- ***Chief financial officers*** are accountable for the accuracy of a company's or organization's financial reporting, especially among publicly traded companies. They direct the organization's financial goals, objectives, and budgets. For example, they may oversee the investment of funds and manage associated risks.

- ***Chief information officers*** are responsible for the overall technological direction of an organization, which includes managing the information technology and computer systems. They organize and supervise information-technology-related workers, projects, and policies.

- ***Chief operating officers*** oversee other executives who direct the activities of various departments, such as human resources and sales. They also carry out the organization's guidelines on a day-to-day basis.

- ***Chief sustainability officers*** address sustainability issues by enacting or overseeing a corporate sustainability strategy. For instance, they may manage programs and policies relating to environmental issues and ensure that the organization complies with environmental or other government regulations.

Mayors, along with ***governors***, ***city managers***, and ***county administrators***, are chief executive officers of governments. They typically oversee budgets, programs, and uses of resources. Mayors and governors must be elected to office, and managers and administrators typically are appointed.

School superintendents and ***college or university presidents*** are chief executive officers of school districts and postsecondary schools. In addition to overseeing operations, they also manage issues, such as student achievement, budgets and resources, and relations with government agencies and other stakeholders.

General and operations managers oversee operations that are too diverse and general to be classified into one area of management or administration. Responsibilities may include formulating policies, managing daily operations, and planning the use of materials and human resources. They make staff schedules, assign work, and ensure projects are completed. In some organizations, the tasks of chief executive officers may overlap with those of general and operations managers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Top Executives," http://www.bls.gov/ooh/management/top-executives.htm#tab-2 (accessed Sep. 5, 2013).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this occupational group:

> Although education and training vary widely by position and industry, many top executives have at least a bachelor's degree and a considerable amount of work experience. . . .
>
> Many top executives have a bachelor's or master's degree in business administration or in an area related to their field of work. College presidents and school superintendents typically have a doctoral degree in the field in which they originally

> taught or in education administration. Top executives in the public sector often have a degree in business administration, public administration, law, or the liberal arts. Top executives of large corporations often have a Master of Business Administration (MBA).
>
> Top executives who are promoted from lower level managerial or supervisory positions within their own firm often can substitute experience for education. In industries such as retail trade or transportation, for example, people without a college degree may work their way up to higher levels within the company and become executives or general managers.

Id. at http://www.bls.gov/ooh/management/top-executives.htm#tab-4 (accessed Sep. 5, 2013).

These statements from the *Handbook* do not indicate that a bachelor's degree or the equivalent, in a specific specialty, is normally required for entry into this occupational category. Instead, the *Handbook* indicates that these positions generally impose no specific degree requirement on individuals seeking employment. The statement that "many" top executives have college degrees is not synonymous with the "normally required" standard imposed by this criterion. To the contrary, such a statement does not even indicate that a majority of top executives possess such a degree. Also, while the *Handbook* indicates that top management positions may be filled by individuals with a broad range of degrees, its subsequent discussion of the training and education necessary for such employment clearly states that companies also hire executives based on lower-level experience within their own organizations or management experience with another business. Moreover, the *Handbook* does not state that those positions which do require a bachelor's degree or the equivalent require that the degree be in a specific specialty.

The *Handbook*, therefore, does not support a finding that a position's inclusion within the General and Operational Managers occupational group is sufficient in itself to establish that the position is one that satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that is, by establishing that the particular position is one for which, in the words of the criterion, "a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry." Having made that determination, the AAO turns next to the *Handbook's* discussion of the general duties of a training and development manager.

The *Handbook's* discussion of the duties typically performed by training and development managers states, in pertinent part, the following:

> Training and development managers plan, direct, and coordinate programs to enhance the knowledge and skills of an organization's employees. They also oversee a staff of training and development specialists. . . .
>
> Training and development managers typically do the following:
>
> - Assess employees' needs for training

- Align training with the organization's strategic goals
- Create a training budget and keep operations within budget
- Develop or update training programs to ensure that they are current and make the best use of available resources
- Oversee the creation of training manuals, online learning modules, and other educational materials for employees
- Review training materials from a variety of vendors and select materials with appropriate content
- Teach training methods and skills to instructors and supervisors
- Evaluate the effectiveness of training programs and instructors

Executives increasingly realize that developing the skills of their organization's workforce is essential to staying competitive in business. Providing opportunity for development is a selling point for recruiting high-quality employees, and it helps in retaining employees who can contribute to business growth. Training and development managers work to align training and development with an organization's goals.

Training and development managers oversee training programs, staff, and budgets. They are responsible for organizing training programs, including creating or selecting course content and materials. Most training takes place in a classroom, computer laboratory, or training facility. But some training is in the form of a video, Web-based program, or self-guided instructional manual. Regardless of how it is conducted, managers must ensure that training content, software, systems, and equipment are appropriate and meaningful.

Training and development managers typically supervise a staff of training and development specialists, such as instructional designers, program developers, and instructors. Managers teach training methods to specialists who, in turn, instruct the organization's employees, both new and experienced. Managers direct the daily activities of specialists and evaluate their effectiveness. Although most managers primarily oversee specialists and training and development program operations, some—particularly those in smaller companies—also may direct training courses.

To enhance employees' skills and an organization's overall quality of work, training and development managers often confer with managers of each department to identify its training needs. They may work with top executives and financial officers

> to identify and match training priorities with overall business goals. They also prepare training budgets and ensure that expenses stay within budget.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Training and Development Managers," http://www.bls.gov/ooh/management/training-and-development-managers.htm#tab-2 (accessed Sep. 5, 2013).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

> Although a bachelor's degree is sufficient for many positions, some jobs for training and development managers require a master's degree. Managers can come from a variety of educational backgrounds but often have a bachelor's degree in human resources, business administration, or a related field.
>
> Some employers prefer or require that managers have a master's degree, usually with a concentration in training and development, human resources management, organizational development, or business administration.
>
> Training and development managers also may benefit from studying instructional design, behavioral psychology, or educational psychology. In addition, as technology continues to play a larger role in training and development, a growing number of organizations seek candidates who have a background in information technology.

Id. at http://www.bls.gov/ooh/management/training-and-development-managers.htm#tab-4 (accessed Sep. 5, 2013).

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.[7] Section 214(i)(1)(b) of the Act (emphasis added).

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[7] Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Here, although the *Handbook* indicates that a bachelor's or higher degree is typically required, the *Handbook's* information also clearly indicates that a bachelor's or higher degree in a specific specialty, or such a degree-equivalent in a specific specialty, is not normally a minimum requirement for entry into the Training and Development Managers occupational group. Rather, as clearly indicated by the total wording of the *Handbook's* section last quoted above, entry into the occupation is not limited to persons with a particular academic major or concentration or who hold a degree from a particular group of closely related specialties:

Further, the AAO observes that, in addition to recognizing that there is no set range of acceptable degree majors or academic concentrations, the *Handbook* also indicates that a bachelor's degree in business administration is sufficient for some positions. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook*'s recognition that a bachelor's degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation.

Accordingly, as the *Handbook* indicates that hire as a training and development manager does not normally require at least a bachelor's degree in a specific specialty or its equivalent, the *Handbook* does not support the proffered position as satisfying the criterion at 8 C.F.R. §214.2(h)(4)(iii)(A)(*1*).

The materials from DOL's Occupational Information Network (O*NET OnLine) do not establish that the proffered position satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. 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 Job Zone designations make no mention of the specific field of study from which a degree must come. As was noted previously, the AAO 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. The Specialized Vocational Preparation (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. For all of these reasons, the O*NET OnLine excerpt submitted by counsel is of little evidentiary value to the issue presented on appeal.

The AAO further finds that the excerpt that counsel submits from Education-Portal.com is not probative evidence towards satisfying this or any other criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The excerpt does, indeed, state that "[m]ost employers require business operations managers to hold a bachelor's degree in business administration, management, or accounting." However, neither the Internet excerpt nor any other evidence in the record of proceeding establishes whatever empirical basis, if any, there is for the statement. Nothing in the record specifies any studies, surveys, data, industry publications, or any authoritative source as the basis for this conclusionary statement about what "most employers require." Additionally, while it states a conclusion that conflicts with the

Handbook's information, neither the excerpt nor any other evidence in the record even addresses that conflict, let alone provides a basis for finding the excerpt's information more reliable and authoritative than the contrary information provided in the Department of Labor's *Handbook.*

Additionally, there is the fact that the Education-Portal Internet excerpt identifies a bachelor's degree in business administration as a sufficient educational credential. Again, however, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

Finally, the AAO notes again that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Before moving to the next criterion, the AAO will close its comments upon why it is not persuaded that the proffered position establishes that the proffered position is partially composed of a position within the Training and Development Managers occupational group. The AAO finds that, read within the context of the generalized information that the petitioner has presented about the staffing and operations of its six-employee business, the training and development duties that the petitioner has presented – also in relatively abstract terms of generalized functions – fail to establish that the beneficiary would be involved in any training and development involving the staffing, budgeting, and sustained efforts that the *Handbook* indicates as typical for Training and Development Manager positions. Further, the AAO finds that the *Handbook's* description of the General and Operations Managers subgroup of the Top Executives occupational classification is sufficiently broad to encompass the duties that the petitioner ascribes to the training and development management aspects of the proffered position. In this regard, the AAO here quotes the related segment of this decision's earlier excerpts from the *Handbook's* "Top Executives" chapter:

> ***General and operations managers*** oversee operations that are too diverse and general to be classified into one area of management or administration. Responsibilities may include formulating policies, managing daily operations, and planning the use of materials and human resources. They make staff schedules,

> assign work, and ensure projects are completed. In some organizations, the tasks of chief executive officers may overlap with those of general and operations managers.

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 calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 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 requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Nor do the seven job-vacancy announcements submitted into the record satisfy the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, the content of the advertisements indicates that they are not relevant to this standard, as the advertisements appear to be for organizations that are outside the petitioner's industry. Second, the petitioner has not submitted any evidence to demonstrate that these advertisements are from companies "similar" to the petitioner in size, scope, and scale of operations, business efforts, expenditures, or other fundamental dimensions.[8] Second,

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[8] As noted above, the petitioner described itself on the Form I-129 as a six-employee sports clothing and trading company and provided a North American Industry Classification System (NAICS) Code of 448110, "Men's Clothing Stores." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "448110 Men's Clothing Stores," http://www.census.gov/cgi-bin/sssd/naics/naicsrch (accessed Sep. 5, 2013).

However, manufactures tobacco products, appears to be a child-care organization; is an online retailer; are technology companies; and is a telecommunications company. The record contains no information regarding the business operations of .

Counsel does not explain how the petitioner is similar to any of these companies. Again, simply 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. at 165.

the petitioner has not established that these seven positions are "parallel" to the proffered position.[9] Nor has the petitioner established that the job-vacancy announcements even specify a bachelor's degree, or the equivalent, in a specific specialty as a hiring requirement.[10] Nor does the petitioner submit any evidence regarding how representative these advertisements are of even the advertising organization's usual recruiting and hiring practices with regard to the positions advertised. Again, simply 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 at 165.[11]

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as 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.

Next, the AAO finds that the petitioner did not 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."

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can

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[9] For example, it is noted that work experience is required for six these seven positions. However, as noted above, the petitioner indicated by the wage-level in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation. It is therefore difficult to envision how these attributes assigned to the proffered position by the petitioner by virtue of its wage-level designation on the LCA would be parallel to the positions described in these job vacancy announcements.

[10] For example, the vacancy announcement from does not state that a bachelor's degree is required' it states only that such a degree "is desired." states a preference, not a requirement, for a bachelor's degree in electrical engineering. states that it would accept two years of work experience with the company in lieu of a bachelor's degree.

[11] Furthermore, according to the *Handbook* there were approximately 2,233,900 persons employed as top executives in 2010. *Handbook* at http://www.bls.gov/ooh/management/top-executives.htm#tab-6 (accessed Sep. 5, 2013). It states that there were approximately 34,100 persons employed as training and development managers that year. *Id.* at http://www.bls.gov/ooh/management/training-and-development-managers.htm#tab-6 (accessed Sep. 5, 2013). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the seven submitted vacancy announcements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that these advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. Rather, the AAO finds, that, as reflected in this decision's earlier quotation of duty descriptions from the record of proceeding, the petitioner has not distinguished either the proposed duties, or the position that they comprise, from generic top-executive and/or training-and-development-management duties, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Additionally, the AAO incorporates here by reference and reiterates its earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation, as this factor is inconsistent with the relative complexity and uniqueness required to satisfy this criterion. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks that require limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that she will receive specific instructions on required tasks and expected results; and that her work will be reviewed for accuracy.

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with a bachelor's degree, or the equivalent, in a specific specialty. Consequently, as it did not show that the particular position for which it filed this petition is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. The record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated

by the performance requirements of the proffered position.[12] In the instant case, the record does not establish a prior history of recruiting and hiring for the proposed position of only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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 occupation as 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 assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The record contains no information regarding any other operations and development managers that the petitioner has employed. Even if the record contained such evidence, the AAO would still find that the petitioner failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) because the record does not, as indicated above, establish that its degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position, a determination which is strengthened by the petitioner's submission as the supporting LCA one that was certified for the lowest wage-level, which is appropriate for a comparatively low, entry-level position relative to others within its occupation.

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[12] Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation.

As the petitioner has failed to demonstrate a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), which requires the petitioner to establish that the nature of the proffered 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.

Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of duties of relatively low complexity.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

> **Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The pertinent guidance from the Department of Labor, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

> **Level II** (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that this higher-than-here-assigned, Level II wage-rate itself indicates performance of only "moderately complex tasks that require limited judgment," is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

> **Level III** (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.
>
> Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

> **Level IV** (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II). The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved 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 specific specialty.

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(4)*.

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

IV. Prior H-1B Approvals

Finally, it is noted that the beneficiary currently holds H-1B status. However, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. If any of the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, they 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 had approved nonimmigrant petitions on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

V. Conclusion

As set forth above, the AAO agrees with the director's finding that the petitioner failed to demonstrate that the proffered position is a specialty occupation. Beyond the decision of the director, the AAO finds additionally that the conflict between the LCA and the petition described above adversely affects the merits of this petition, because it materially undermines the credibility of the petitioner's statements regarding the nature and level of work that the beneficiary would perform.

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 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's

enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd.* 345 F.3d 683.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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