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

OCT 0 2 2013

DATE: 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,

Michael T. Kelly
for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director revoked the approval of the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. Approval of the petition will remain revoked.

On the Form I-129 visa petition, the petitioner describes itself as a software development and consulting services company[1] established in 2005. The petition approval that is the subject of the revocation decision here on appeal had been granted on November 9, 2010, for the petitioner's continued H-1B employment of the beneficiary for the period September 27, 2010 to September 26, 2013, in what the petitioner had asserted to be a full-time computer software engineer position at a salary of $80,000 per year.[2]

The director revoked approval of the petition under the revocation-upon-notice provisions at 8 C.F.R. § 214.2(h)(11)(iii)(A) and (B), concluding that the petitioner failed: (1) to demonstrate the existence of an employer-employee relationship between the petitioner and the beneficiary; and (2) to establish 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 notice of intent to revoke approval of the petition (NOIR); (3) the director's letter revoking approval of the petition; and (4) the Form I-290B and supporting documentation. The record of proceeding reflects that the petitioner did not submit a response to the NOIR.

Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's grounds for revoking the approval of this petition. Accordingly, the appeal will be dismissed, and approval of the petition will be revoked.

Beyond the decision of the director, the AAO finds an additional issue which, although not addressed in the director's decision, nevertheless would have been a proper basis for revocation of the approval of the petition, namely, the petitioner's failure to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.[3] Although the director did not revoke approval of the

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[1]The petitioner provided a North American Industry Classification System (NAICS) Code of 541511, "Custom Computer Programming Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541511 Custom Computer Programming Services," http://www.census.gov/cgi-bin/sssd/naics/naicsrch (accessed Sep. 4, 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 "Computer Software Engineers, Systems Software" occupational classification, SOC (O*NET/OES) Code 15-1032.00, 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 additional aspect of the petition.

petition on this ground, this would not preclude the director from initiating revocation-on-notice proceedings with regard to this issue.

I. Pertinent Facts and Procedural History

The petitioner filed the extension petition on June 28, 2010, and, as already noted, it was approved on November 9, 2010 - with dates of validity from September 27, 2010 through September 26, 2013.

The beneficiary applied for an H-1B visa pursuant to the petition approval at the U.S. Consulate in Chennai, India, and he appeared for an interview in connection with his application on June 21, 2011. However, based upon the information gleaned at the visa-application interview, the Consulate returned the petition to U.S. Citizenship and Immigration Services (USCIS), with a memorandum requesting that that the petition be reviewed for consideration for initiation of revocation action by USCIS.

In turn, the director issued the NOIR on November 28, 2012; and she revoked approval of the petition on February 20, 2013. Counsel submitted a timely appeal.

In its June 15, 2010 letter of support, the petitioner stated that the duties of the proffered position would include researching, designing, developing, and testing operating systems and network distribution software; modifying existing software to correct errors; analyzing information to determine, recommend, and plan the installation of new systems or modify existing systems; developing and directing software systems testing and validation procedures; and advising clients on, and performing maintenance on, software systems.

The record of proceeding contains a copy of an April 21, 2008 Consulting Agreement executed between the petitioner and which called for the petitioner to provide personnel to perform consulting services for pursuant to an undated document entitled "Exhibit A: Services and Compensation." The record also contains a letter from Roamware, dated April 18, 2011, which states that the beneficiary has been providing services to that company since April 2008.

In its April 23, 2013 letter submitted on appeal, the petitioner states the following:

> Since [the beneficiary] was unable to return to the USA to resume his employment back in 2010, he lost his job opportunity with our company . . . Since [the beneficiary] never entered the USA to resume his employment with us, support of the H-1B petition on behalf of [the beneficiary] is withdrawn.
>
> * * *
>
> The three year delay by the consulate in responding to [the beneficiary's] visa application has resulted in [the beneficiary] losing his job opportunity with us. Accordingly, we withdraw support of his H-1B.

In his April 19, 2013 appellate brief, counsel states, in part, the following:

> Because the Beneficiary has been stuck outside the USA pending visa approval, the job opportunity no longer exists. Accordingly, the Petitioner, through the undersigned counsel of record, respectfully requests [that] USCIS reverse the revocation decision for the aforementioned reasons and grant a withdrawal of the H-1B. . . .
>
> [P]etitioner prays that the AAO reverse the director's revocation decision and [then] grant withdrawal of the meritorious H-1B petition.

II. Authority to Revoke Approval of a Petition

In general, the authority to revoke approval of an H-1B petition is found at 8 C.F.R. § 214.2(h)(11), which states, in pertinent part, the following:

> *Revocation of approval of petition.*
>
> (i) *General.*
>
> (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section. An amended petition on Form I-129 should be filed when the petitioner continues to employ the beneficiary. . . .
>
> (B) The director may revoke a petition at any time, even after expiration of the petition.
>
> (ii) *Immediate and automatic revocation.* The approval of any petition is immediately and automatically revoked if the petitioner goes out of business, files a written withdrawal of the petition, or the Department of Labor revokes the labor certification upon which the petition is based.
>
> (iii) *Revocation on notice—*
>
> (A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition. . . .; or

(*2*) The statement of facts contained in the petition . . . 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. . . .

III. The Arguments for Reversing the Director's Decision to Revoke are Moot

Both counsel and the petitioner argue that the issues raised by the director in the NOIR and subsequent revocation decision have been overcome, and they request that the revocation decision be reversed and the petition approved. However, counsel and the petitioner also both indicate that the job offer no longer exists, and, therefore, they also request that, in conjunction with reinstatement of its approval, the petition be withdrawn,.

For the reasons to be discussed below, the AAO will dismiss the appeal, and, accordingly, the approval will remain revoked. The attempt to withdraw the petition at this time will not be granted.

However, the petitioner should note that even if the AAO were to withdraw the director's revocation decision and approve the petition, the results would be the same; that is, the approval of the petition would be revoked. This is because the regulation at 8 C.F.R. § 214.2(h)(11)(ii) states:

> The approval of any petition is immediately and automatically revoked if the petitioner . . . files a written withdrawal of the petition.

The consequences of an automatic revocation issued under 8 C.F.R. § 214.2(h)(11)(ii) and a revocation-on-notice issued pursuant to 8 C.F.R. § 214.2(h)(11)(iii) are identical. Thus, regardless of which action the AAO takes, the outcome will be the same: approval of the petition must be revoked. As such, the issues raised on appeal are moot, and discussing them in detail would serve no purpose. For this reason, the appeal will therefore be dismissed as moot, and the director's February 20, 2013 decision will not be disturbed.

Although the issues underlying the director's decision are moot, the AAO will nonetheless address them briefly, simply to note that, even if they were not moot, the director's revocation decision was correct. That is, as will now be discussed, the petitioner has not overcome either of the two separate and independent grounds that the director specified as the bases for revoking approval of the petition

IV. Employer-Employee Relationship Issue

The AAO will briefly review the common-law standard that USCIS uses in assessing whether a petitioner has established the employer-employee relationship with a beneficiary so as to qualify as an H-1B employer.

The United States Supreme Court determined that where federal law fails to clearly define the term "employee," courts should conclude that the term was "intended to describe the conventional master-servant relationship as understood by common-law agency doctrine." *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 322-323 (1992) (hereinafter "*Darden*") (quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989)). The Supreme Court stated:

> "In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party."

Darden, 503 U.S. at 323-324 (quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. at 751-752); *see also Clackamas Gastroenterology Associates, P.C. v. Wells*, 538 U.S. 440, 445 (2003) (hereinafter "*Clackamas*"). As the common-law test contains "no shorthand formula or magic phrase that can be applied to find the answer, . . . all of the incidents of the relationship must be assessed and weighed with no one factor being decisive." *Darden*, 503 U.S. at 324 (quoting *NLRB v. United Ins. Co. of America*, 390 U.S. 254, 258 (1968)).

As such, while social security contributions, worker's compensation contributions, unemployment insurance contributions, federal and state income tax withholdings, and other benefits are still relevant factors in determining who will control an alien beneficiary, other incidents of the relationship, e.g., who will oversee and direct the work of the beneficiary, who will provide the instrumentalities and tools, where will the work be located, and who has the right or ability to affect the projects to which the alien beneficiary is assigned, must also be assessed and weighed in order to make a determination as to who will be the beneficiary's employer. Without full disclosure of all of the relevant factors, the director would be unable to properly assess whether the requisite employer-employee relationship will exist between the petitioner and the beneficiary. Therefore, the director's decision is affirmed, and the petition must be denied for this additional reason.

The record of proceeding lacks sufficient documentation evidencing what exactly the beneficiary would do for the entire period of time requested or where exactly and for whom the beneficiary would be providing services. Although the record contains a letter from dated April 8, 2011, that letter was issued nearly a year after the petition was filed. Furthermore, as the record does not contain a Statement of Work, Work Order, or similar document issued pursuant to the Consulting Agreement executed between the petitioner and it is not clear that the Consulting Agreement has any binding effect on either party. In any event, the record of proceeding before the AAO lacks substantive evidence sufficient to address and overcome the evidentiary deficiencies regarding the employer-employee issue, and, in particular, the record lacks persuasive information regarding the substantive nature of the beneficiary's day-to-day work as it would actually be performed, and regarding the sources, types, and degrees of supervision, management, and control that would be exercised over the substantive requirements of the beneficiary's work when and where assigned.

Given the lack of relevant evidence, the petitioner has failed to establish who has or will have actual control over the beneficiary's work or duties, or the conditions and scope of the beneficiary's services. In other words, the petitioner has failed to establish that the petitioner, or any other company which it may represent, will have and maintain the requisite employer-employee relationship with the beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). Again, there is insufficient evidence detailing where the beneficiary will work and the duties he will perform, even after the NOIR and the appeal allowed the petitioner ample opportunity to render this deficiency.

As the petitioner has not established that the approval of the petition had been based upon sufficient evidence that either it or its clients would be a "United States employer" having an "employer-employee relationship" with the beneficiary in consonance with the common law standards discussed above, the appeal will be dismissed, and the approval of the petition will remain revoked.

Further, the AAO reiterates that the petitioner's acknowledgement on appeal that there is no work for the beneficiary if the approval of the petition were reinstated, defeats the argument of appeal for reversing the director's determination to revoke on this issue. As discussed above, initiation of revocation-upon-notice action would again be required, at least pursuant to the provision at 8 C.F.R.

§ 214.2(h)(11)(iii)(A) (that is, "The beneficiary is no longer employed by the petitioner in the capacity specified in the petition"), and revocation would ultimately result, for the petitioner's own admission would allow for no other determination. Also, as noted above, if the AAO were to reinstate the approval of the petition, the request to withdraw the petition would necessitate immediate and automatic revocation of the approval, pursuant to the provision at 8 C.F.R. § 214.2(h)(11)(ii)(A) for immediately and automatic revocation of a petition's approval if the petitioner files a written withdrawal of the petition.

V. Specialty Occupation Issue

The AAO also agrees with the director's determination that the approval of the petition must also be revoked for the petitioner's failure to establish that the approval was based upon sufficient evidence that the proffered position qualifies for classification as a specialty occupation. As recognized in *Defensor v. Meissner*, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location in order to properly ascertain the minimum educational requirements necessary to perform those duties. *See Defensor v. Meissner*, 201 F.3d at 387-388. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. *See id.*

Here, the record of proceeding in this case is similarly devoid of sufficient information from the claimed end-client, regarding the job duties to be performed by the beneficiary for it. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary, therefore, precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the director erred in revoking the petition's approval for lack of sufficient evidence that the proffered position qualifies as a specialty occupation.

For the reasons discussed above, the appeal will be dismissed and the approval of the petition will remain revoked.

VI. Beneficiary Qualifications

The AAO will now address an issue which, although not raised by the director, would have been a proper basis for initiating revocation-upon-notice proceedings pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5); that is, it appears that the director's approval of the petition violated section (h) of the regulations at 8 C.F.R. § 214.2. Specifically, it appears that the petitioner has failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.

The statutory and regulatory framework that the AAO must apply in its consideration of the evidence of the beneficiary's qualification to serve in a specialty occupation follows below.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

> (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
>
> (B) completion of the degree described in paragraph (1)(B) for the occupation, or
>
> (C) (i) experience in the specialty equivalent to the completion of such degree, and
>
> (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

> (*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*3*) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
>
> (*4*) Have education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of

> expertise in the specialty through progressively responsible positions directly related to the specialty.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states the following:

> General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As the beneficiary did not earn a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*). As he does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*), either.[4] As the petitioner has not demonstrated that the beneficiary holds an unrestricted state license, registration or certification to perform the duties of a specialty occupation, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*3*), either. Accordingly, 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) remains as the only avenue for the petitioner to demonstrate the beneficiary's qualifications to perform the duties of the proffered position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) requires a demonstration that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively

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[4] Although the record of proceeding contains an evaluation of the beneficiary's academic credentials, it does not establish that those credentials are equivalent to a bachelor's degree awarded by an accredited institution of higher education in the United States. Instead, it finds them equivalent to three years of academic coursework in the United States. Accordingly, that evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*).

In order to be relevant under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*), an evaluation must be based upon the beneficiary's academic credentials alone.

responsible positions directly related to the specialty. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) is determined by at least one of the following:

> (*1*) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
>
> (*2*) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
>
> (*3*) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;[5]
>
> (*4*) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
>
> (*5*) A determination by the Service [(1)] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and [(2)] that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an evaluation of the beneficiary's academics and work experience prepared by who claims to be Lead Faculty of Management Information Systems and Business Administration at the According to Dr. the beneficiary's foreign education and work experience collectively equate to a U.S. bachelor's degree in computer information systems.

However, this evaluation does not demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*), as the petitioner has not demonstrated that Dr. then possessed the authority to grant college-level credit for training and/or experience at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. 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.

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[5] The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

No evidence has been submitted to establish, and the petitioner does not assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(*2*), which requires submission of the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*), that is, by virtue of an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials.

Next, as the record of proceeding does not contain evidence of the type of certification or registration from a nationally-recognized professional association or society that is specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*4*), the petitioner has not satisfied that criterion either.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) states the following with regard to achieving a USCIS determination that a beneficiary has the requisite qualifications to serve in a specialty occupation (emphasis added):

> For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be *clearly demonstrated* [(1)] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [(2)] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and [(3)] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:
>
> (*i*) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;[6]
>
> (*ii*) Membership in a recognized foreign or United States association or society in the specialty occupation;
>
> (*iii*) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

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[6] *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. *See* 8 C.F.R. § 214.2(h)(4)(ii).

(*iv*) Licensure or registration to practice the specialty occupation in a foreign country; or

(*v*) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Although the record contains some information regarding the beneficiary's work history, it does not establish that this work experience included the theoretical and practical application of specialized knowledge required by the proffered position; that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the field; and that the beneficiary achieved recognition of her expertise in the field as evidenced by at least one of type of documentation such as delineated in 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*i*)-(*v*).

Accordingly, it also appears that the beneficiary did not qualify under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*i*)-(*v*), either, and therefore did not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

As such, it appears that the approval of the petition was erroneous because the evidence of record did not establish that the beneficiary qualified to perform the duties of a specialty occupation; and, accordingly, revocation-on-notice proceedings on this additional ground, pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(*5*), would be within the director's discretion.

VII. Prior H-1B Approval

Finally, it is noted that the beneficiary was previously granted 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 the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, it would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'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 petition 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).

VIII. Conclusion

As discussed above in section IV, because approval of the petition will be revoked regardless of which action the AAO takes, further pursuit of the matter at hand is moot. The director's decision will therefore be affirmed, and the appeal will be dismissed as moot. However, the AAO nonetheless agrees with the director's grounds for revoking the approval of this petition, also; and the AAO finds that the petitioner has not overcome those grounds on appeal. Accordingly, if considered on the merits, the petitioner's appeal will be dismissed, and the approval of the petition will remain revoked.

Beyond the decision of the director, the AAO finds that reinitiation of revocation proceedings on the basis of the petitioner's failure to establish that the beneficiary qualifies to perform the duties of a specialty occupation would be within the director's discretion.

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. Approval of the petition remains revoked.