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: SEP 12 2014 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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL AND FACTUAL BACKGROUND

The petitioner filed the instant petition at the California Service Center on February 10, 2011, seeking to classify the beneficiary as an H-1B temporary 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) in order to employ her in what the petitioner designates, on the visa petition, as a Cost Accountant Manager position.

The director approved the visa petition on February 16, 2011. However, on August 9, 2012 the service center director issued an NOIR in this matter. The petitioner's response was received on September 6, 2012. Subsequently, on February 15, 2013, the director revoked approval of the visa petition. The petitioner filed a timely appeal on March 14, 2013.

The AAO has determined that the director did not err in her decision to revoke approval of the petition. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and approval of the petition will be revoked.

II. THE LAW

A. 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. . . .

B. Specialty Occupation

In order to demonstrate that a proffered position constitutes a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

(A) theoretical and practical application of a body of highly specialized knowledge,

and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this

illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as 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 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.

III. EVIDENCE

The AAO bases its decision upon its review of the entire record of proceeding, which includes the following: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's NOIR; (3) the response to the NOIR; (4) the director's revocation letter; and (5) the Form I-290B and counsel's submissions on appeal.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Cost Account Manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2011, Accountants and Auditors from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted, *inter alia*, the following: (1) a letter, dated February 1, 2011, from who identified himself in that letter as the petitioner's director; and (2) a document entitled "Summary of Oral Contract," which was also signed by Mr

February 1, 2011 letter contains the following description of the duties of the proffered position:

> The main duties assigned to [the beneficiary] will be as follow:
> - to conduct studies which provide detailed cost information not supplied by general accounting systems,
> - plan study and collects data to determine cost of business activity, such as furniture and fixture purchase, inventory, transportation, and labor,
> - analyze data obtained and record results, using computer,
> - analyze changes in product design according to the customers' order, means of transportation, [and] service provided to determine effects on cost,
> - analyze actual costs and prepare periodic report comparing standard costs to actual costs;
> - conduct management according to the results of reports reflecting specific prices and facts affecting process and profitability of service as well as develop computer-based accounting system.

also stated:

> Due to the extensive knowledge of business and trade required of this position, it is essential that the person in question have at least a bachelor's degree in accounting or finance.
>
> The position requires the analysis of foreign annual financial reports as well as oral and written communication with business representatives and financial Institutions from Asian countries such as Singapore, Malaysia, China, and Indonesia.

The Summary of Oral Contract contains a description of the duties of the proffered position that is substantially the same as the description found in the February 1, 2011 letter.

The petition was approved on February 16, 2011. However, the director issued an NOIR on August 9, 2012, and notified the petitioner that USCIS had obtained new information regarding the beneficiary's employment with the petitioner. Specifically, the NOIR stated the following:

> [O]n June 2, 2011, an administrative site visit was performed at the address listed on the petition as the location where the beneficiary would work. Upon review of the work location address at , the site inspector discovered that the beneficiary was not being employed solely as a Cost Accountant Manager as indicated on the petition. Instead, the beneficiary indicated that she is

employed as an Operations Manager and has been acting as the Operations Manager for the past 3 years.

The director offered the petitioner an opportunity to respond to the NOIR. In response, counsel submitted, *inter alia*, the following: (1) a statement, dated September 4, 2012, signed by the beneficiary; (2) an organizational chart of the petitioner's operations; (3) printouts of e-mail messages to which one of the petitioner's other employees, was a party; and (4) counsel's own letter, dated September 5, 2012.

In her September 4, 2012 statement, the beneficiary acknowledged that she had been interviewed at work but denied stating that she had worked as anything other than the petitioner's cost account manager.

The petitioner's organizational chart identifies 27 people the petitioner employs. It shows that it employs previously identified as its director, as its CEO, and that it employs as its Operations Manager, and that it employs the beneficiary as its Cost Accountant Manager. The organizational chart indicates that the beneficiary has no subordinates. It does not indicate that anyone holds the position of president in the petitioner's organization, and it does not show that the petitioner employs a bookkeeping clerk or accounting clerk.

In a March 12, 2012 e-mail message, states that he is the petitioner's Warehouse/Operations Manager. In a June 19, 2012 e-mail message, signature line identifies him as "Warehouse Operations." The e-mail messages pertain to adjustments to orders placed on the petitioner's behalf.

In her September 5, 2012 letter, counsel asserted that the beneficiary did not indicate that she had been working as the petitioner's operations manager and that, because she has a heavy accent, the officer conducting the administrative site visit may have misunderstood the beneficiary.

Upon reviewing the petitioner's response to the NOIR, the director found the evidence submitted insufficient to refute its findings, and she revoked the approval of the petition on February 15, 2013, finding that the petitioner was not employing the beneficiary as its Cost Accountant Manager.

On appeal, counsel submitted (1) a printout from the website pertinent to Cost Accounting Manager positions; (2) twenty-two job vacancy announcements; (3) an affidavit from dated March 9, 2013; (4) documents pertinent to the petitioner's employment of (5) e-mail messages to which the beneficiary was a party; and (6) a brief

The printout indicates that Cost Accounting Manager positions typically require a four-year accounting degree. The twenty-two vacancy announcements submitted are apparently provided to show that Cost Accountant positions typically require a minimum of a bachelor's degree in a specific specialty or its equivalent.

In his March 9, 2013 affidavit, again identifies himself as the petitioner's director, reiterated the previously provided description of the beneficiary's duties, and stated that the beneficiary has always been the petitioner's Cost Accounting Manager. He further stated that the beneficiary has never performed the duties of an Operations Manager and that is the petitioner's Operations Manager.

The documents pertinent to employment include an employment contract and pay statements. The employment contract is dated January 11, 2011. In it, agrees to begin working for the petitioner as its Warehouse & Operations Manager on January 31, 2011. The pay statements provided show wages paid to for irregular periods of employment during January, February, March, June, and July of 2011.

In the e-mail messages provided, the beneficiary discusses various aspects of the petitioner's finances.

In her brief, counsel noted that the visa petitions signed by the petitioner were not mentioned in the NOIR. Counsel stated that reliance on those visa petitions in the decision of revocation, therefore, violated the notice provision of 8 C.F.R. § 103.2(b)(16)(i). Counsel also reiterated the assertion that the beneficiary had never stated that she worked in any position other than cost account manager. Counsel stated that the petitioner employs as its operations manager.

IV. ANALYSIS

Although the NOIR focused primarily upon the issue of whether the proffered position is a specialty occupation, it also addressed the findings of the site investigator, who found that the beneficiary was no longer employed by the petitioner in capacity stated in the petition. Consequently, the AAO finds that the NOIR placed the petitioner on notice that revocation of the approval of the petition was contemplated within the scope of two revocation-on-notice provisions: (1) the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A)(*1*), in that the petitioner was no longer employing the beneficiary in the capacity stated in the petition; and (2) the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A)(*5*), in that approval of the petition violated paragraph (h) of 8 C.F.R. § 214.2 because the proffered position is not a specialty occupation.

The AAO further observes, pertinent to the notice issue raised by counsel, that the notice required in 8 C.F.R. § 103.2(b)(16)(i) pertains only to evidence of which the petitioner is unaware. There is no indication in the record that the petitioner would have been unaware of the visa petitions it filed and the contents thereof and, thus, notice of the contents of those documents was not required pursuant to 8 C.F.R. § 103.2(b)(16)(i). In addition, even if the petitioner were unaware of this information, notice of the evidence relied upon was provided in the decision of denial. What remedy would appropriately cure the procedural defect urged by counsel, beyond the appeal process itself, is unclear. In any event, the issue of notice is now moot, as the petitioner has been informed of the adverse evidence, and providing an additional notice of the adverse evidence would serve no purpose. Further, counsel responded to that evidence on appeal. The AAO finds that any procedural

error has thus been cured. However, as a matter of discretion, the AAO will not rely upon the visa petitions signed by the beneficiary, of which counsel claims to have had insufficient notice.

The admission of the beneficiary that she was working in some capacity other than the proffered position is sufficient, if believed, to show that she would work in that other capacity, rather than in the proffered position, if the instant visa petition were approved.

On appeal, counsel stated:

> On rebuttal we had provided an affidavit from the beneficiary attesting that she made no such statements and that perhaps her accent and lack of fluency in the English language may have led the inspector to understand her statements about being interested in the operations of the company as a whole with actual duties of an Operations Manager.

Contrary to counsel's statement, the beneficiary did not discuss her knowledge of the English language in her affidavit, and there is no evidence in the record to suggest that the beneficiary is not fluent in the English language. To the contrary, that evidence suggests otherwise: according to an evaluation submitted by the petitioner, the beneficiary "completed a bachelor's-level program of study" in the United Kingdom, and English-speaking country. The petitioner also claims that it has employed the beneficiary in the United States since February 29, 2004. The record of proceeding also contains e-mail messages sent by the beneficiary, all of which were written in the English language. Given the beneficiary's combination of British education and time spent working in the United States, the assertion that her claimed "lack of fluency in the English language" prevented her from understanding and answering the investigator's questions, and prevented the investigator from understanding the beneficiary, is not credible.

In essence, the petitioner's response is a general denial, that is, the beneficiary asserts that she never made the statement attributed to her. Insufficient reason exists to doubt that the site visit was competently conducted and faithfully reported. The AAO finds the explanation offered by the petitioner unpersuasive. The petitioner has not demonstrated that it continues to employ the beneficiary in the capacity specified in the visa petition,[1] and the petition will consequently remain revoked pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(*1*).

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[1] The petitioner's registration with the Illinois Secretary of State indicates that the beneficiary is the petitioner's president, which is another reason to believe that the beneficiary is not employed in the capacity specified in the visa petition. That the beneficiary is the petitioner's president also suggests that the beneficiary may exercise such a degree of control over the petitioner that the petitioner and beneficiary do not have a true employer-employee relationship within the meaning of 8 C.F.R.§ 214.2(h)(4)(ii), and that the petitioner may not have had the standing to file the instant visa petition as the petitioner's employer. Again, it is also a reason to question whether the beneficiary is really employed by the petitioner only as its Cost Accountant Manager.

The AAO now turns to the 8 C.F.R. § 214.2(h)(11)(iii)(A)(5) basis of the revocation decision. The visa petition states that the proffered position is a Cost Accountant Manager position while the LCA states that the proffered position is a Cost Account Manager position. Subsequently, who stated that he is the petitioner's director, referred to the position as a Cost Accounting Manager position. The difference may be significant, as one title may suggest management of accountants and another may suggest management of accounts.

The beneficiary described her position as operations manager. That position is distinctly different from either a cost account manager position or a cost accountant manager position, and it has job duties distinctly different from those of the other two positions. That the beneficiary characterized her job as an operations manager position suggests that she would not perform the duties described by The fact that the petitioner employs and characterizes his position as an operations manager is not sufficient to reconcile the discrepancy that exists between list of duties and the beneficiary's assertion that she is the petitioner's operations manager. Because that discrepancy has not been reconciled, the petitioner has not established the duties that the beneficiary would actually perform.

Further, although the job title "cost accountant manager," as stated on the visa petition, is nominally supervisory, the organizational chart shows that the beneficiary has no subordinates and that the petitioner does not employ a bookkeeping clerk, an accounting clerk, or anyone in any position that would typically report to a cost accountant manager, cost account manager, or managerial accountant. This evidence therefore conflicts with the assertion that the beneficiary has supervisory responsibilities.

The lack of any bookkeeping or accounting clerks suggests another reason to question the assertion that the beneficiary would perform only the duties described in description. As the petitioner does not employ a bookkeeper or accounting clerk, and as there is no evidence that the beneficiary would be relieved from performing the company's general, financial record keeping, such as recording the petitioner's financial transactions, updating statements, and checking financial records for accuracy (all duties of a bookkeeping clerk and/or accounting clerk), it appears likely that the beneficiary will perform at least some of those duties. For this additional reason, it is not clear that the duty-descriptions provided by are accurate.

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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or

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The petitioner was not apprised of the fact that the website of the Illinois Secretary of State lists the beneficiary as its president, and it has not been afforded the opportunity to contest that information and the inferences that may be drawn from it. Although the identity of the petitioner's president is a matter known to the petitioner, and does not trigger any right to notice pursuant to 8 C.F.R. § 103.2(b)(16)(i), the AAO chooses, again, as a matter of discretion, not to rely on that evidence in today's decision.

reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* At 591-592. Consistent with *Matter of Ho*, the petitioner is obliged to reconcile that discrepancy with independent objective evidence.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary 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 evidence of record does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation, and approval of the petition on that basis violated subsection (h) of 8 C.F.R. § 214.2. The visa petition will therefore remain revoked pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5).

On appeal, counsel emphasizes that the proffered position is the same position in job title and duties as the previously approved H-1B petitions filed by the petitioner on behalf of the beneficiary. Counsel also references an April 23, 2004 memorandum authored by William R. Yates (hereinafter Yates memo) as establishing that USCIS must give deference to those prior approvals or provide detailed explanations why deference is not warranted. Memorandum from William R. Yates, Associate Director for Operations, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, HQOPRD 72/11.3, (Apr. 23, 2004).

First, it must be noted that the Yates memo specifically states as follows:

> [A]djudicators are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous. *Matter of Church Scientology International,* 19 I&N 593, 597 (Comm. 1988). Each matter must be decided according to the evidence of record on a case-by-case basis. *See* 8 C.F.R. § 103.8(d). . . . Material error, changed circumstances, or new material information must be clearly articulated in the resulting request for evidence or decision denying the benefit sought, as appropriate.

Thus, the Yates memo does not advise adjudicators to approve an extension petition when the facts of the record do not demonstrate eligibility for the benefit sought. On the contrary, the memorandum's language quoted immediately above acknowledges that a petition should not be approved, where, as here, the petitioner has not demonstrated that the petition should be granted.

Again, as indicated in the Yates memo, 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).

Second, the memorandum clearly states that each matter must be decided according to the evidence of record. In the appeal, counsel suggests, implicitly, that USCIS was required to look at the prior records of proceeding dealing with the separate adjudications of the approved H-1B petitions filed on behalf of the beneficiary and provide a reason why deference is not warranted.

Copies of these approved petitions, however, were not included in the record and, therefore, this claim is without merit. If a petitioner wishes to have prior decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i).

When "any person makes an application for a visa or any other document required for entry, or makes an application for admission, [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such benefit. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972). Each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. There is no requirement either in the regulations or in USCIS procedural documentation requiring nonimmigrant petitions to be combined in a single record of proceeding.[2] Accordingly, the director was not required to request and obtain copies of the prior H-1B petitions.

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[2] USCIS does not engage in the practice of reviewing previous nonimmigrant petitions when adjudicating extension petitions. Given the various and changing jurisdiction over various nonimmigrant petitions and applications, requiring previously adjudicated nonimmigrant petitions to be reviewed before any newly filed application or petition could be adjudicated would result in extreme delays in the processing of petitions and applications. Furthermore, such a suggestion, while being impractical and inefficient, would also be

Again, the petitioner in this case failed to submit copies of the prior H-1B petitions and their respective supporting documents and approval notices. As the record of proceeding does not contain any evidence of the approved petitions, there were no underlying facts to be analyzed and, therefore, no prior, substantive reasons could have been provided to explain why deference to the approvals of the prior H-1B petitions was not warranted. The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. For this additional reason, the Yates memorandum does not apply in this instance.

V. CONCLUSION

As discussed above, the AAO agrees with the director's grounds for revoking the approval of this petition.[3] Accordingly, the appeal will be dismissed, and approval of the petition will remain revoked.

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 is revoked.

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tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361.

[3] Because the grounds specified in the director's revocation decision preclude approval of the petition, the AAO will not discuss any additional issues it has observed in its review of this matter.