(b)(6)

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

U.S. Citizenship and Immigration Services

DATE: AUG 0 7 2015 PETITION RECEIPT #:

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

I. PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 24-employee preschool established in In order to employ the beneficiary in what it designates as a full-time "Group Teacher" position, the petitioner seeks to extend her classification 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, finding that the evidence of record did not establish that the proffered position constitutes a specialty occupation.[1] The petitioner now files this appeal, asserting that the Director's decision was erroneous.

The record of proceeding includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the Director's requests for additional evidence (RFEs); (3) the petitioner's responses to the RFEs; (4) the Director's decisions denying the petition; (5) our withdrawal of the Director's first decision denying the petition and remand; and (6) the petitioner's appeals and submissions on appeal.

As will be discussed below, we find that the evidence of record is insufficient to establish that the proffered position constitutes a specialty occupation.[2] Accordingly, the appeal will be dismissed, and the petition will be denied.

II. SPECIALTY OCCUPATION

A. Legal Framework

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B 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)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires:

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[1] The Director initially denied the petition on March 29, 2013, on the basis that the petitioner did not establish the availability of specialty occupation work as of the date of filing. We withdrew this decision, and remanded the case back to the Director to consider whether the proffered position constitutes a specialty occupation.

[2] We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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

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

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

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must 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 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 simply rely on a position's title. The specific duties of the proffered 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 alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

B. The Proffered Position

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title "25-2011, Preschool Teachers, Except Special Education" from the Occupational Information Network (O*NET).

In a letter dated March 6, 2013, the petitioner stated that it is an "[redacted]" that has been providing childcare services for the past [redacted] years. The petitioner stated that "[a]s a dually-eligible program, 50% of its pre-school students must meet Head Start standards, 20% must qualify under CCBG (Child Care Block Grant), and 30% must be dually eligible (Head Start and CCBG)." The petitioner further asserted that "51% of the total number of preschool children is Universal Pre-Kindergarten (UPK) eligible."

Regarding the proffered position, the petitioner explained that the beneficiary is being offered the position of group teacher, which, under the supervision of an educational director, "is responsible for planning and supervising age appropriate activities for the children." The petitioner then listed the duties of the proffered position, as follows:

1. Supervising teacher assistants and childcare workers to ensure that proper care, instruction and supervision are provided to all children at all times.
2. Conferring with teacher aides to develop curriculum and to monitor each child's intellectual, physical, social and emotional growth.
3. Instructing, supervising, encouraging and training teacher assistants and aides on what activities are appropriate for children.
4. Teaching preschool pupils academic, social and manipulative skills using research based curricula in a private non-for profit setting.
5. Maintaining a comprehensive and ongoing portfolio assessment for each child, including weekly observations in each area[.]
6. Conducting home visits and parent conferences to discuss the child's individual development and progress, assisting the parents in developing observational skills and solicit parent observations[.]
7. Assisting in implementing children's I.E.P. (Individual Education Plan[)].
8. Conducting developmental and social emotional screenings of students utilizing research based tools.

As to the educational requirements for the proffered position, the petitioner asserted that the "qualifications for the position are provided by Article 47 (Child Care Services) of the New York City Health Code, as found in Title 24 of the Rules of the City of New York."

C. Analysis

A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position

We 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 in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of the petition.

As stated above, the petitioner asserted that the "qualifications for the position are provided by Article 47 (Child Care Services) of the New York City Health Code, as found in Title 24 of the Rules of the City of New York." Title 24, Section 47.13(d) of the New York City Health Code (NYCHC) states the following, in pertinent part:

Group teacher. No person shall be placed in charge of a group of children in a child *care* service unless s/he is certified or qualified pursuant to paragraph (1), (2), (3) or (4) of this subdivision.

(1) *Baccalaureate degree and State certification.* A baccalaureate degree in early childhood education or related field of study and current valid certification issued by the State Education Department pursuant to 8 NYCRR § 80 or successor rule or equivalent certification from another jurisdiction, as a teacher in the field of early childhood education; or

(2) *Equivalent certification.* Certification from a public or private certifying or teacher accrediting organization or agency granted reciprocity by the New York State Department of Education; or

(3) *Baccalaureate degree.* A baccalaureate degree in early childhood education or related field and five years of supervised experience in a pre-school program if currently employed in a permitted child care service; or

(4) *Study plan eligibility.* The person has proposed a plan for meeting the requirements of paragraph (1), (2) or (3) of this subdivision within seven years, and has obtained approval of this plan by an accredited college. A person who is study plan eligible shall submit documentation to the Department indicating proof of enrollment in such college and specifying the time required for completion of training.

* * *

(B) To be study plan eligible, a person shall have:

(i) Associate's (AA or AS) degree in early children education, practicum included; or

(ii) Ninety or more undergraduate college credits and one year classroom experience teaching children in pre-kindergarten, kindergarten or grades 1-2; or

(iii) Baccalaureate in any other academic subject and one year classroom experience teaching children up to third grade.

A careful reading of NYCHC § 47.13(d) does not support the petitioner's assertion that "New York City statutorily requires the minimum of a baccalaureate degree" for the group teacher position.

Section 47.13(d)(4) of the NYCHC, in particular, allows an individual who possesses an associate's degree, ninety or more undergraduate college credits, or a bachelor's degree in any academic subject, and who meets other requirements, to become "study plan eligible" and hence qualified as a group teacher. In other words, according to the NYCHC, a group teacher may qualify without a bachelor's degree if he or she is enrolled in an approved study plan. The Director specifically noted this provision of law in her December 8, 2014 decision, but the petitioner did not directly address it on appeal.

We have also reviewed the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook),* which we consider an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[3] The chapter in the *Handbook* regarding the occupational category "Preschool Teachers" states the following, in pertinent part:

> **How to Become a Preschool Teacher**
>
> Education and training requirements vary based on settings and state regulations. They range from a high school diploma and certification to a college degree.
>
> **Education**
>
> In childcare centers, preschool teachers generally are required to have a least a high school diploma and a certification in early childhood education. However, employers may prefer to hire workers with at least some postsecondary education in early childhood education.
>
> Preschool teachers in Head Start programs are required to have at least an associate's degree. However, at least 50 percent of all preschool teachers in Head Start programs nationwide must have a bachelor's degree in early childhood education or a related field. Those with a degree in a related field must have experience teaching preschool-age children.
>
> In public schools, preschool teachers are generally required to have at least a bachelor's degree in early childhood education or a related field. Bachelor's degree programs teach students about children's development, strategies to teach young children, and how to observe and document children's progress.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Preschool Teachers," http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-4 (last visited July 31, 2015).

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[3] All of our references to the *Handbook* are to the 2014-2015 edition, which may be accessed at the Internet site http://www.bls.gov/ooh/.

The *Handbook* does not support the assertion that a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position, either. Instead, it indicates that in private childcare centers like the petitioner, "preschool teachers generally are required to have a least a high school diploma and a certification in early childhood education." *Id.* Moreover, while the *Handbook* states that "employers may prefer to hire workers with at least some postsecondary education in early childhood education," a preference is not a requirement, and "some" postsecondary education in early childhood education is not equivalent to a bachelor's degree in early childhood education.

We note the *Handbook*'s statement that "[p]reschool teachers in Head Start programs are required to have at least an associate's degree" and "at least 50 percent of all preschool teachers in Head Start programs nationwide must have a bachelor's degree in early childhood education or a related field." However, there is insufficient evidence in the record to establish that the petitioner's preschool program is a Head Start program, and that the proffered position is one among the 50% of preschool teacher positions nationwide requiring a bachelor's degree. Here, the petitioner simply stated that it is an "[redacted] with a "dually-eligible program," and provided several statistics regarding its student characteristics (i.e., that 50% of its pre-school students must meet Head Start standards, 20% must qualify under CCBG, 30% must be dually eligible (Head Start and CCBG), and 51% of the total number of preschool children is UPK eligible). However, the petitioner did not further explain and document the significance and relevance of its "[redacted] status and/or "dually-eligible program" with respect to the minimum educational requirements for entry into the proffered position.

The petitioner has not submitted evidence from another objective, authoritative source under this criterion. The duties and requirements of the position as described in the record of proceeding are insufficient to establish that this particular position proffered by the petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The requirement of a baccalaureate or higher degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations

Next, we will review the record regarding 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) 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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the evidence does not demonstrate that the proffered position is one for which the *Handbook* or another authoritative source reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Nor are there submissions from professional associations, firms, or individuals in the petitioner's industry.

The petitioner submitted one vacancy announcement for a group teacher position placed by Day Care Center This vacancy announcement, alone, is insufficient to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). The petitioner provided no evidence to establish that it is similar to the posting organization, and that the proffered position is parallel to the posted position.[4] Even if the petitioner had established these elements, it is not clear what statistically valid inferences, if any, can be drawn from a single announcement with regard to the common educational requirements for entry into parallel positions in similar organizations in the industry.[5]

The petitioner repeatedly states that the requirement of a baccalaureate or higher degree "is common to the industry for pre-school teachers." However, other than the single job announcement which is deficient for the reasons discussed above, the petitioner did not submit any other evidence to support this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The evidence of record does not satisfy the first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

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[4] For example, the petitioner did not provide any information about the general characteristics of Day Care Center such as the scope of its operations, whether or not it is a Head Start program, and its level of staffing (to list just a few elements that may be considered). The petitioner also did not provide any details about the posted position. The vacancy announcement lists only the title of the position and provides no job duties. As stated previously, USCIS does not simply rely on a position's title.

[5] *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisement was 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").

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

The evidence of record also does 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."

We find that the petitioner has not sufficiently developed relative complexity or uniqueness as aspects of the proffered position. In this regard, the petitioner has not adequately distinguished the proffered position from other group teacher positions in New York City which do not necessarily require a minimum of a baccalaureate degree in a specific specialty. As previously discussed, neither section 47.13(d) of the NYCHC nor the *Handbook* supports the proposition that all group teacher positions in New York City require a minimum of a baccalaureate degree in a specific specialty for entry into the occupation.

As the evidence of record is insufficient to establish that the duties of the proffered position are so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

We turn 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 in a specific specialty, or its equivalent, for the proffered position. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position. In addition, the petitioner may submit any other documentation it considers relevant to this criterion of the regulations.

Here, the petitioner submitted its organizational chart depicting the beneficiary as one of four group teachers currently employed by the petitioner. However, the petitioner provided no information regarding the educational qualifications of the three other group teachers, as well as of other group teachers it may have previously employed.[6] The petitioner also submitted a single, undated job announcement for a group teacher position with its organization. The announcement does not appear to be for the same position as the announcement states a requirement of a "Master's degree in ECE and Special Education" which is not a claimed requirement of the proffered position. The petitioner also did not provide any other relevant information about this notice, such as when and where it was published (if at all), how many positions were filled using this particular notice, or the educational qualifications of the person(s) hired under this notice, if any. Without more, the

[6] The petitioner indicated that it was established in and has been operating for almost years.

submitted evidence is insufficient to establish the petitioner's hiring and recruiting history for the proffered position.

While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner 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 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent

We find that the evidence of record does not satisfy 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 specific specialty or its equivalent.

As reflected in this decision's earlier discussions, the record of proceeding is insufficient to differentiate the proffered position from other group teacher positions in New York City which do not, as a category, require a minimum of a baccalaureate degree in a specific specialty for entry into the occupation.

While the petitioner repeatedly asserts that "the nature of the specific duties of a Group Teacher . . . are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree," the evidence of record does not adequately support this assertion. That is, the petitioner does not explain why the proffered position requires the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. The petitioner has not specifically identified what body or bodies of highly specialized knowledge is/are required to perform each particular duty, which particular course(s) of study provided such

knowledge, and how these courses represent an established curriculum leading to a baccalaureate or higher degree in early childhood education or a related field. As such, these are conclusory statements that have little to no probative value. Again, 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 evidence in the record of proceeding does not 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.[7]

III. CONCLUSION AND ORDER

Based upon a complete review of the record of proceeding, we find that the evidence does not establish that the proffered position, as described, more likely than not constitutes a specialty occupation.[8] Accordingly, the appeal will be dismissed and the petition will be denied.

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[7] We note that counsel asserts in the appeal brief that "it is most unfair and unreasonable for [the petitioner's] present petition to be treated differently from the initial H-1B visa approval obtained for [the beneficiary] by her former employer." We are not required to approve 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). 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. 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, our 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, we 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).

[8] As this matter is dispositive of the petitioner's appeal, we will not address any of the additional deficiencies we have identified on appeal.

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.