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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



U.S. Citizenship
and Immigration
Services



DATE: FEB 03 2015 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

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

DISCUSSION: The service center director (hereinafter the "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a [REDACTED] Japanese language school¹ established in [REDACTED]. In order to employ the beneficiary in what it designates as a part-time "Japanese Language Instructor" at a salary of \$32.50 per hour, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, concluding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

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

We find that, upon review of the entire record of proceeding, the evidence of record does not overcome the director's grounds for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

I. FACTUAL AND PROCEDURAL HISTORY

As indicated above, the petitioner seeks to employ the beneficiary in a position that it describes as a "Japanese Language Instructor" on a part-time basis. The Labor Condition Application (LCA) that the petitioner submitted in support of the petition was certified for use with a job prospect within the "Self-Enrichment Education Teachers" occupational classification, SOC (O*NET/OES) Code 25-3021.00, and a Level III prevailing wage rate. The LCA also reflects that, as mentioned above, the petitioner assigned "Japanese Language Instructor" as the position's job title.

In a letter dated March 26, 2014, the petitioner indicated that the beneficiary's specific duties were as follows:

- Instruct students, using various teaching methods, such as lectures and dialogues. She uses audio, on-line and visual aids, textbooks and workbooks to supplement her lectures and in-class dialogues with students.
- Prepare course objectives and outlines (i.e., course syllabi) following curriculum guidelines and requirements of [the petitioning entity].

¹The petitioner provided a North American Industry Classification System (NAICS) Code of 611630, "Language Schools." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "611630 Language Schools," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Jan. 20, 2015).

- Assign lessons and correct homework.
- Administer tests to evaluate students' progress, record results, and recommend the issuance of certificates to show successful completion of courses objectives.
- Meet with students to discuss their progress and make suggestions to help them improve.
- Participate in faculty and professional meetings, educational conferences, and teacher training workshops.
- Assist students in selecting course of study and counsel them.

[The beneficiary] will apply her professional Japanese language teaching skills, knowledge and experience to independently accomplish these job duties with little or no supervision from the school's Board members and other faculty.

The petitioner went on to state that "Japanese language teachers have extremely specialized and complex teaching duties which require attainment of at least a Bachelor's degree and usually a Master's degree."

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 9, 2014. The petitioner was asked to submit additional evidence to establish that the proffered position qualifies as a specialty occupation. The director outlined some of the types of specific evidence that could be submitted.

In response to the director's RFE, the petitioner provided the following information regarding the duties inherent in the proffered position and associated percentages of time involved in their performance:

This position requires [the beneficiary] to teach Intermediate and Beginning Japanese language classes to non-Japanese speaking students. She is responsible for 9 hours of classroom teaching per week. She spends time preparing teaching materials, reviewing and correcting homework and exams, meeting with students to counsel and assisting them with their studies, attending faculty meetings, and attending training workshops. [The beneficiary] is also expected to participate in school programs and functions. [The beneficiary's] job duties and the percentage of time she spends on each are roughly as follows:

- Instruct students, using various teaching methods, such as lectures and dialogues. She uses audio, on-line and visual aids, textbooks and workbooks to supplement her lectures and in-class dialogues with students. 40%

- Prepare course objectives and outlines following curriculum guidelines and requirements of [the petitioning entity]. 5%
- Assign lessons and correct homework. 15%
- Administer tests to evaluate students' progress, record results, and recommend the issuance of certificates to show successful completion of courses objectives. 5%
- Meet with students to discuss their progress and make suggestions to help them improve. 20%
- Participate in faculty and professional meetings, educational conferences, and teacher training workshops. 10%
- Assist pupils in selecting course of study and counsel them. 5%

[The beneficiary] applies her superb education and professional experience to independently accomplish these job duties with little or no supervision from the school's Board members and other faculty. She works at the same level as our other [redacted] faculty members, each of whom hold a Master's degree. Japanese language teachers much have at least a Bachelor's degree or equivalent education and experience to successfully accomplish these job duties.

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. The director denied the petition on August 4, 2014.

II. SPECIALTY OCCUPATION

We will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, we find that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

A. Law

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

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

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

As a preliminary matter, the petitioner's claim that a bachelor's degree is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (1st Cir. 2007).

Accordingly, the petitioner's assertion that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that that degree be in any specific specialty, is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Having made the above preliminary finding, we turn now to the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

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

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² We reviewed the information in the *Handbook* regarding the occupational category "Self-Enrichment Education Teachers" and note that this occupation is one for which the *Handbook* does not provide detailed data. The *Handbook* states the following about these occupations:

Data for Occupations Not Covered in Detail

Although employment for hundreds of occupations are covered in detail in the *Occupational Outlook Handbook*, this page presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2012 employment, the May 2012 median annual wage, the projected employment change and growth rate from 2012 to 2022, and education and training categories are presented.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm> (last visited Jan. 20, 2015).

Thus, the narrative of the *Handbook* indicates that there are many occupations for which only brief summaries are presented. That is, detailed occupational profiles for these occupations are not developed.³ The *Handbook* continues by stating that approximately five percent of all employment is not covered either in the detailed occupational profiles or in the summary data. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

² The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. This office's references to the *Handbook* are from the 2014-15 edition available online.

³ We note that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm and home management advisors; audio visual and multimedia collections specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

We observe that the *Handbook* does not indicate that self-enrichment education teacher positions comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The full-text of the *Handbook* regarding this occupational category is as follows:

Self-Enrichment Education Teachers

(O*NET 25-3021.00)

Teach or instruct courses other than those which normally lead to an occupational objective or degree. Courses may include self-improvement, nonvocational, and nonacademic subjects. Teaching may or may not take place in a traditional educational institution. Excludes "Fitness Trainers and Aerobics Instructors" (39-9031). Flight instructors are included with "Aircraft Pilots and Flight Engineers" (53-2010).

- 2012 employment: **316,200**
- May 2012 median annual wage: **\$35,320**
- Projected employment change, 2012-22:
 - Number of new jobs: **43,900**
 - Growth rate: **14 percent (about as fast as average)**
- Education and training:
 - Typical entry-level education: **High school diploma or equivalent**
 - Work experience in a related occupation: **Less than 5 years**
 - Typical on-the-job-training: **None**

Id. (last visited Jan. 20, 2015).

The *Handbook* summary data provides "education and training categories" for occupations. The occupational category "Self-Enrichment Education Teachers" falls into the group of occupations for which a high school diploma or equivalent is the typical entry-level education. Accordingly, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into this occupational category.

Accordingly, as the *Handbook* indicates that entry into the Self-Enrichment Education Teachers occupational category does not normally require at least a bachelor's degree in a specific specialty or its equivalent, it does not support the proffered position as satisfying this first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a

favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

In this case, the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is the minimum requirement for entry. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that this particular position 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 failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions sharing all three characteristics of being (1) within the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

As stated earlier, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Next, we find that the job-vacancy announcements submitted by counsel do not satisfy this alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), either. That is, neither the job-vacancy announcements themselves nor any other evidence within the record of proceeding establish that those advertisements pertain to positions that are parallel to the proffered position, as required for evidence to merit consideration under the first alternative prong is position. In this regard, we make several specific findings.

First, we note that under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must establish that "the degree requirement is common to *the industry in parallel positions among similar organizations* (emphasis added)." For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation regarding other organizations is generally outside the scope of

consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an 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)).

In addition, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting and actual hiring history for the type of jobs advertised, let alone how representative they are of the industry practice in those areas.

We also see that the extensive experience that some of the job advertisements specify as hiring requirements suggests that they involve the application of greater occupational knowledge than the proffered position.⁴ So, the job-vacancy advertisements do not establish that the advertised positions are "parallel" to the proffered position.

In addition, two of the submitted advertisements do not specify a requirement for a bachelor's or higher degree in a specific specialty or its equivalent. The [REDACTED] advertisement for a "Part-Time Language Instructor" only states "Bachelor's degree or the equivalent" without any specification of any particular academic major. Likewise, the [REDACTED] advertisement for a "Japanese/English ELD Teacher" specifies a "BA degree" with no indication that the bachelor's degree must be in any particular area or equivalent to a bachelor's or higher degree in a specific specialty.

(As the submitted vacancy-announcements are not probative evidence towards satisfying this criterion, further analysis of their content is not necessary.)

Thus, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions sharing all three characteristics of being (1) within the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

⁴ By way of example, the [REDACTED] advertisement for a "Japanese Immersion Elementary Teacher" states "At least 1 year of professional teaching experience in a language immersion classroom." The [REDACTED] advertisement for a "High School Japanese Teacher" states "At least five years of high school Japanese language teaching experience." The [REDACTED] advertisement for "Japanese Language Lecturers" states "At least three years of Japanese-language teaching experience." The extensive experience that these job advertisements specify as hiring requirements suggests that they involve the application of greater occupational knowledge than the proffered position.

Next, we find that the evidence of record 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 observe that the petitioner has indicated that the beneficiary's educational background and extensive experience in the industry will assist her in carrying out the duties of the proffered position, and takes particular note of her work as a Japanese Language Teacher for the petitioner in valid F-1 OPT status. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area.

The record of proceeding does not include any discussion and documentation of the proffered position sufficient to show that the proposed duties, or any aspects of the particular position here proffered, constitute a position so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty.

Further, as discussed in detail above, the petitioner's assertion that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that that degree be in any specific specialty, evidences that the proffered position is not in fact a specialty occupation.

As the evidence of record therefore fails to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with 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) either.

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 or higher degree in a specific specialty or its equivalent for the position.

To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. As recognized by the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd result." *Id.* at 388. If USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific

specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.*

Satisfaction of this requirement — that is, by substantiating that the particular position's actual performance requirements necessitate a petitioner's practice of hiring only persons with certain minimum educational credentials — cannot be assumed, when, as here, the proffered position falls within an occupational group (here, Self-Enrichment Education Teachers) for which neither the *Handbook* nor any other reliable authority establishes that entry normally requires at least a bachelor's degree, or the equivalent, in a specific specialty.

In response to the RFE, the petitioner explained that it hires its faculty members through contacts at [REDACTED] without the need to advertise, and that therefore, there are no position announcements. Alternatively, the petitioner has submitted a list of 15 faculty, their position, and the highest educational attainment was submitted. However, we note that the petitioner's list of faculty represents a claim regarding the individuals' educational credentials, rather than evidence to support that claim. Notably, the petitioner did not submit probative evidence establishing the teachers are employed by the petitioner (e.g., pay records, wage reports) and documentation regarding their academic credentials (e.g., transcripts). Moreover, the petitioner has not provided any evidence to substantiate that the teachers possess degrees in fields of study or disciplines directly related to the duties and responsibilities of the position.

Moreover, the petitioner failed to provide the job duties and day-to-day responsibilities of the positions that it claims are the same or similar as the proffered position. The petitioner did not provide any information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. It is unclear whether the duties and responsibilities of these individuals are the same or related to the proffered position. We observe that the petitioner did not submit any documentation regarding its recruiting practices. Thus, the submission is not probative in establishing this criterion of the regulations.

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).

Next, 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.

We find that, to the extent that they are described in the record of proceeding, the duties that the petitioner ascribed to the proffered position do not establish the relative specialization and complexity required to satisfy this particular criterion. Rather, we find that, while the duties as described indicate generic functions associated with teaching in general, they do not provide evidence that demonstrates that, in the context of this particular proffered position, the substantive nature or performance requirements of those functions are so specialized and complex as to require

the application of a body of highly specialized knowledge that is usually associated with attainment of at least a bachelor's degree in a specific specialty. Further, we reiterate our earlier discussion regarding the *Handbook's* entries for positions falling within the "Self-Enrichment Education Teacher" occupational category. Again, the *Handbook* does not indicate that a bachelor's or higher degree in a specific specialty, or the equivalent, is a standard, minimum requirement to perform the duties of such position. For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

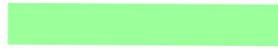
III. PRIOR H-1B APPROVALS

Counsel for the petitioner noted on appeal that USCIS approved other petitions that had been previously filed by the petitioner for Japanese language teachers. The director's decision does not indicate whether she reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals 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 the nonimmigrant petitions on behalf of the 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).

IV. CONCLUSION AND ORDER

For the reasons discussed above, we conclude that the evidence of record does not establish that the proffered position qualifies for classification as a specialty occupation. Thus, the appeal will be dismissed, and the petition will be denied.



In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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