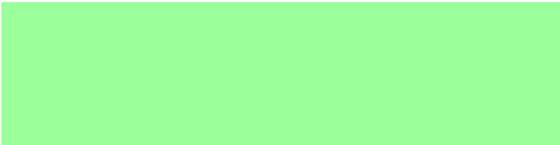


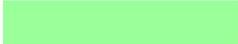
(b)(6)

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



U.S. Citizenship
and Immigration
Services

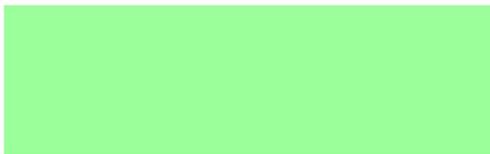


DATE: **FEB 24 2015** OFFICE: VERMONT SERVICE CENTER FILE: 

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as a 48-employee learning center¹ established in [REDACTED]. In order to employ the beneficiary in what it designates as a lead teacher position at a salary of \$11 per hour,² 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, concluding that the evidence of record does not establish that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before us 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, Notice of Appeal or Motion, and supporting documentation.

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

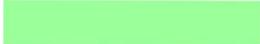
II. STANDARD OF REVIEW

In the exercise of our administrative review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), unless the law specifically provides that a different standard applies. In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 624410, "Child Day Care Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "624410 Child Day Care Services," <http://www.naics.com/naics-code-description/?code=624410> (last visited December 3, 2014).

² The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Teachers and Instructors, All Other" occupational classification, SOC (O*NET/OES) Code 25-3099, and a Level II (qualified) prevailing wage rate.



* * *

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id. at 375-76.

We conduct our review of service center decisions on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d at 145. In doing so, as noted above, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's grounds for denial were correct. Upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that its claims are "more likely than not" or "probably" true.

III. PRELIMINARY OBSERVATIONS

Before addressing the director's grounds for denying the petition, we will first enter some preliminary findings material to our determination of the merits of this appeal.

First, it is noted that counsel states on appeal that "[t]he beneficiary has been promoted to the role of a Kindergarten teacher." Counsel states further that "[a]s a kindergarten teacher it is established that a degree in early elementary education is required."³

A petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities on appeal. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant changes are made to the initial request for approval, the petitioner must file a new petition with applicable fees⁴ rather than seek approval of a petition that is not supported by the facts in the record. Therefore, we will not consider the beneficiary's new position in making our determination in this case.

We also note the discrepancy between the NAICS code provided on the petition and counsel's statements on appeal. As noted earlier, the petitioner provided a NAICS code of 624410, Child Day Care Services on the Form I-129. On appeal, however, counsel states that the petitioner is "comprised of two educational programs – Infants to Preschool and pre-Kindergarten, private Kindergarten, and private 1st Grade." Counsel states that we should concentrate on "the second level program that primarily deals with the private Kindergarten, private 1st grade and the expansion into higher grade-levels." According to the NAICS, "[e]stablishments primarily engaged in providing preschool or prekindergarten education are classified in Industry 624410, Child Day Care Services." The petitioner's self-classification of its business as falling within the "624410, Child Day Care Services" category indicates that it is primarily engaged in child day care services rather than in kindergarten and first grade education, as asserted by counsel. Furthermore, the petitioner submitted a printout of its website, where it states that it is "a preschool of academic excellence, not just a daycare" and that its objective "to provide your child with an outstanding preschool education in a loving child care environment." The evidence of record suggests that the petitioner is primarily a day care center that also provides preschool programs. In addition, the undated "Terms and Condition of Employment Agreement" document signed by the petitioner's president states that the beneficiary's "[w]ork assignments may vary based on current personnel consensus or whenever [the beneficiary's] service is needed," adds further uncertainty to the educational level at which the beneficiary would primarily provide her services is not clear. We are not persuaded by counsel's suggestion that we should concentrate on the petitioner's kindergarten and first grade programs in conducting our analysis.

³ Again, the petitioner titled the proffered position "Lead Teacher" on the Form I-129, and the LCA was certified for use with a job prospect located within the "Teachers and Instructors, All Other" occupational category, SOC (O*NET/OES) Code 25-3099.

⁴ *See* 8 C.F.R. § 214.2(h)(2)(i)(E).

IV. ANALYSIS

We will now turn to the director's determination that the evidence of record does not demonstrate that the proffered position is a specialty occupation. To meet the petitioner's burden of proof in establishing the proffered position as a specialty occupation, the evidence of record must establish that the employment the petitioner 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.

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency

can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, 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.”

That is, for H-1B approval, the evidence of record must demonstrate that a legitimate need for an employee exists and to substantiate that the petitioner has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor’s degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor’s degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

The record of proceeding contains inconsistent information regarding the nature of the proffered position, which undermines the petitioner’s credibility with regard to the services the beneficiary will perform. When a petition includes numerous discrepancies, those inconsistencies will raise serious concerns about the veracity of the petitioner’s assertions. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In the "Letter of Employment" dated October 9, 2013, the petitioner stated that as a Lead Teacher, the beneficiary would:

Plan and coordinate educational policies for a specific subject area or grade level. She will develop programs for in-service education of teacher's aide and other teaching personnel. She will confer with the organization's officials to develop curricula and establish guidelines for the educational program. She will also confer with land [sic] & professional groups to disseminate and receive inputs on teaching methods. She will study and prepares [sic] recommendations on instructional materials and teaching aides. She will conduct research into areas as teaching methods and techniques for dissemination to other teaching personnel.

The petitioner also submitted a "Lead Teacher Job Description" with the filing of the petition. According to this job description, the beneficiary would perform the following duties:

1. Promote high standards and expectations for all students for academic performance and developmental growth while utilizing the [redacted] mission statement [redacted]

2. To implement the [REDACTED] curriculum effectively while working towards the common goal of improving every students [sic] social, academic and developmental level.
3. To integrate various activities throughout the day assuring our students will learn even during plan.
4. Recognizing and recording the efforts of every student throughout the school year, meeting with parents regularly for parent/teacher conferences to relay each students [sic] developmental growth and academic progress.
5. Maintaining an open line of communication with parents.
6. Ensuring that all assistant teachers maintain the same level of standard as yourself, being a team leader and promoting a positive learning environment for all students.
7. Complete the required staff and child development hours annually.
8. Any other responsibility as given to you by a member of the management staff, including the Owner, Director or Curriculum Coordinator.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE. The petitioner was asked to submit probative evidence to establish that the proffered position is a specialty occupation. The director outlined the specific evidence to be submitted. In response to the director's RFE, the petitioner submitted, inter alia, a letter from counsel dated March 14, 2014, a revised job description for the Lead Teacher position, and an additional job description for a Kindergarten and First Grade Lead Teacher. According to the revised job description, the beneficiary would perform the following duties:

1. Promote high standards and expectations for all students for academic performance and developmental growth while utilizing the [REDACTED] mission statement [REDACTED].
2. To implement the [REDACTED] curriculum effectively while working towards the common goal of improving every students [sic] social, academic and developmental level. This includes but is not limited to the following:
 - Posting and following the lesson plans each week
 - Providing literary and supplemental materials in learning stations each week
 - Ensuring each student is given the opportunity to participate in daily activities, in small and large group settings
 - Organizing two circle times per day
 - Assessing each student daily utilizing formal curriculum assessments as well as informal empirical assessments
3. To integrate various activities throughout the day assuring our students will learn even during plan.
4. Recognizing and recording the efforts of every student throughout the school year, meeting with parents regularly for parent/teacher conferences to relay each

- students [sic] developmental growth and academic progress. Completing quarterly report cards to send home with each student.
5. Maintaining an open line of communication with parents throughout the day. This may include speaking with parents over the phone at any time during the day, or meeting with parents face to face.
 6. Ensuring that all assistant teachers maintain the same level of standard as yourself, being a team leader and promoting a positive learning environment for all students.
 7. Maintaining all required rules as mandated by the states Minimum Standards. This includes but is not limited to, properly supervising children at all times, maintaining state specific ratios, maintaining a healthy and safe classroom environment, ensuring proper supervision during outdoor play, ensuring proper toileting procedures, and if applicable to your age group, ensuring proper diaper changing procedures.
 8. Enforcing appropriate disciplinary actions in the classroom at all times. [REDACTED] has a specific discipline procedure that must be followed and if you are unsure of these procedures it is your responsibility to clarify with management.
 9. Document any injury or accident as it occurs in your classroom. This must be signed by a member of management as well as the parent.
 10. Complete the required staff and child development hours annually.
 11. Any other responsibility as given to you by a member of the management staff, including the Owner, Director or Curriculum Coordinator.

The duties of the Kindergarten and First Grade Lead Teacher include the following:

1. Plan lessons that teach students subjects, such as reading and math, and skills, such as studying and communicating with others.
2. Assess students to evaluate their abilities, strengths, and weaknesses.
3. Teach lessons planned to an entire class of students or to smaller groups.
4. Grade students' assignments to monitor their progress.
5. Communicate with parents about their child's progress.
6. Work with students individually to help them overcome specific learning challenges.
7. Prepare students for standardized tests required by the state.
8. Develop and enforce classroom rules to teach children proper behavior.
9. Supervise children outside of the classroom – for example, during lunchtime or recess.

We note first that the duties described by the petitioner in the employment offer letter are inconsistent with the duties described in the job description. The duties as described in the employment offer letter primarily focus on developing teaching curricula and the professional development of the petitioner's staff. The duties described in the job description, on the other hand, focus on the hands-on teaching of children and the development of children through implementation of various teaching and disciplinary methods. It is incumbent upon the petitioner to resolve any

inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho* at 591-92.

On appeal, counsel equates the duties of the proffered position to those of kindergarten or first grade teacher and submits excerpts from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*) for kindergarten and elementary school teachers. Counsel further states that "this Lead Teacher position is broken down to 75% of the time assessed to teaching responsibilities and the remaining 25% of the time to business development (or closely related to job duties of a curriculum coordinator or education administrator)" and submits the "Summary Report for: 11-9031.00 – Education Administrators, Preschool and Childcare Center/Program" from DOL's Occupational Information Network (O*NET).

Furthermore, counsel asserts that there are similarities between the duties of the Lead Teacher position at "Level 4" and the duties of Kindergarten and Elementary School Teachers described in the *Handbook*. We note that the "Letter of Employment Offer," "Terms and Conditions of Employment Agreement," "Lead Teacher Job Description," and the revised job description for the Lead Teacher position do not indicate the level of the proffered position as described in Exhibit A.⁵ Counsel also asserts that there are "similarities between Lead Teacher and Education Administrator." We note that the LCA was certified for SOC code "25-3099, Teachers and Instructors, All Other" and not for Kindergarten Teachers, Except Special Education (SOC code 25-2012), for Elementary School Teachers, Except Special Education (SOC code 25-2021), or for Education Administrators, Preschool and Childcare Center/Program (SOC code 11-9031). Thus, if the petitioner believes that its proffered position falls within one of these occupational categories, it should have classified the position under the appropriate occupation.⁶

Counsel states "[t]o pigeonhole Lead Teachers, for the second level program, in one position stifles the business flexibility required for a small business to excel." However, the petitioner bears the burden of documenting what portion of the beneficiary's duties will be in teaching pre-kindergarten, kindergarten, and first grade. The petitioner has failed to establish any clear distinctions between the levels of the proposed teaching duties of the beneficiary. Specifically, the petitioner has not

⁵ Counsel directs our attention to Exhibit A, entitled "Teacher Credentialing System," which lists the job duties of "Teacher One" through "Teacher Four." The source of this document is not clear.

⁶ It is noted that, even if the proffered position were established as being that of a preschool and childcare center administrator, a review of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (the *Handbook*) does not indicate that, simply by virtue of its occupational classification, such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation of preschool and childcare center administrator. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Preschool and Childcare Center Director," <http://www.bls.gov/ooh/management/preschool-and-childcare-center-directors.htm#tab-4> (last visited Feb. 4, 2015).

established the percentage of time the age level and grade level of the claimed teaching the beneficiary actually performs or will perform.

Furthermore, the petitioner indicates that 25 percent of the beneficiary's time would be spent on "Business Development," and it lists curriculum development, parent/teacher conferences, speaking with prospective parents, and testing prospective students as part of the business development duties. However, the petitioner does not indicate how much time the beneficiary would spend on non-teaching duties such as diaper changing, monitoring students during recess and lunch, and "any other responsibility as given to [the beneficiary] by a member of the management staff," which are listed by the petitioner in the lead teacher job descriptions. We note that the record of proceeding does not contain the petitioner's organizational chart for us to determine the breakdown of its staffing. There is no mention of how many administrative support staff and management level employees there are in the petitioner's organization.⁷ Collectively, this brings into question how much of the beneficiary's time would actually be devoted to teaching versus non-teaching duties. Furthermore, as stated earlier, on the "Terms and Conditions of Employment Agreement," the petitioner stated that the beneficiary's "work assignments may vary based on current personnel consensus or whenever [the beneficiary's] service is needed." The record of proceeding is ambiguous regarding not only what age-level children the beneficiary would instruct when she teaches but also regarding the percentage of time the beneficiary would be spend in teaching and non-teaching duties. Therefore, the record of proceeding does not contain sufficient evidence for us to make a determination regarding the primary and essential nature of the duties of the proffered position.

The record of proceeding lacks sufficient, and consistent, information regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the specialty occupation work that the beneficiary would perform. Without a consistent and meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty, or its equivalent, as a minimum for entry into the occupation. The tasks as described fail to consistently communicate (1) the substantive nature and scope of the beneficiary's employment within the petitioner's business operations; (2) the actual work that the beneficiary would perform; (3) the complexity, uniqueness and/or specialization of the tasks; and/or (4) the correlation between that work and a need for a particular educational level of highly specialized knowledge in a specific specialty.

Therefore, we are precluded from finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that

⁷ As noted, the petitioner stated on the Form I-129 that it is a 48-employee learning center. The petitioner submitted documents indicating the number of teachers, lead teachers, and teacher's aides. A document entitled "Lead Teacher and Assistant Teacher Count" indicates that there are a total of 34 lead teachers and assistant teachers in the petitioner's organization. The document entitled "Teacher levels by Classroom" indicates that there are 39 "teachers." The record does not make clear whether the list of "teachers" includes the lead teachers accounted in the "Lead Teacher and Assistant Teacher Count" document.

determines (1) the normal minimum educational requirement for entry into 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. Thus, the petitioner has failed to satisfy any of the criteria under the applicable provisions at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, it is noted that the beneficiary currently holds H-1B status. However, we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, it would constitute material and gross error on the part of the director. We are 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, 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).

V. CONCLUSION AND ORDER

The petition will be denied and the appeal dismissed for the above stated reason.⁸ 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.

⁸ As the issues discussed above are dispositive of the petitioner's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on the numerous additional issues and deficiencies that we observe in the record of proceeding with regard to approval of the H-1B petition.