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

(b)(6)

U.S. Citizenship and Immigration Services

JUL 0 9 2015

DATE: PETITION RECEIPT #:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

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, California Service Center, denied the nonimmigrant visa petition. After granting the petitioner's motion to reconsider, the Director affirmed the decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner identified itself as "an independent, doctoral degree granting university" that was established in and employed 1500 persons. In order to employ the beneficiary in a position which it designates as an "Assistant Women's Golf Coach," 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, determining that the evidence of record did not establish that the proffered position qualifies for classification as a specialty occupation. On appeal, the petitioner asserts that the Director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding before us includes the following: (1) the petitioner's Form I-129 and supporting documentation; (2) the Director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the Director's denial letter; (5) the Notice of Appeal or Motion (Form I-290B), brief, and additional documentation submitted on motion; and (6) the Director's decision on the motion. We reviewed the record in its entirety before issuing our decision.

Upon review of the entire record of proceeding, we find that 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. LAW

To meet its burden of proof in this regard, the petitioner must establish that it is offering employment to the beneficiary that meets the applicable statutory and regulatory requirements.[1]

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

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[1] We apply the "preponderance of evidence" standard of review as articulated in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). Accordingly, we have examined each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence. Also, 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.

II. APPLICATION OF THE CRITERIA AT 8 C.F.R. § 214.2(h)(4)(iii)(A)

A. The proffered position

At page 11 of the Form I-129 Supplement H the petitioner described the duties of the proffered position as follows:

> Coach women's golf team. Teach fundamentals of the game, demonstrate techniques, evaluate athletes' strengths and weaknesses, [and] prepare women's golf team for competitions. Recruit.

In her two-page letter in support of the petition, the petitioner's associate athletic director highlights the petitioner's women's NCAA Division I golf-program as among the best in the United States. The letter also describes the petitioner as having "the finest facilities for training and competition of any

team in collegiate golf with several first-class championship courses" and "a 2,500 square foot indoor golf facility which houses a putting green, hitting bays, team lounge, and team storage." The associate athletic director also remarks that the petitioner's golf facilities "has given [the petitioner] a competitive edge in the recruitment of student athletes and has helped take an already outstanding golf program to the next level not only in recruiting top prospects but also in attracting the nation's top collegiate programs here for competition."

The associate athletic director's letter addresses the nature of the proffered position, stating:

> The main duty of the Assistant Women's Golf Coach is to assist in the overall operation, administration, and development of the Women's Golf Program. Specific responsibilities include: assisting with conditioning, practices and tournaments; evaluating and recruiting student athletes; assisting with public relations and promotions; performing as a positive role model for student athletes in an upbeat environment that strives for academic and athletic excellence; establishing a professional relationship with students, staff, and the general public to promote the University and its athletic program; and ensuring that the Women's Golf program is in compliance with the rules and regulations of the NCAA, American Athletic Conference, and the The University.

The letter addressed the proffered position's performance requirements as follows:

> The minimum qualifications for the position are a Bachelor's degree, prior coaching and/or playing experience, and strong communication skills. Prior coaching and/or playing experience at the Division I level is preferred. The individual must demonstrate effectiveness in working with a variety of administrative levels and diverse groups of people locate both internally and externally to the University. A commitment to enhancing the overall welfare of the student athletes and [the petitioner] is required.

As part of its RFE-reply evidence the petitioner included a two-page job-posting, entitled "Assistant Women's Golf Coach Job Description[:] Athletics," parts of which we shall now quote.

The posting provides the following "Position Summary":

> The Assistant Women's Golf Coach will report to the Head Women's Golf Coach and is responsible for aiding in all aspects of the women's golf program. Specific responsibilities include: recruitment of student athletes in a highly competitive environment both in the United States and Internationally; ensuring the women's golf program is in compliance with the rules and regulations of the NCAA, American Athletic Conference, and the University; performing as a positive role model for students while establishing a productive, well-rounded environment which stresses the importance of academics, in conjunction with athletics; and working closely with athletic training, academics, and strength and conditioning to monitor the progress of

student athletes; responsible for all aspects of social media for the women's golf program; extensive travel is required[.]

The posting specifies minimum and preferred qualifications, as follows:

MINIMUM QUALIFICATIONS

Bachelor's degree required; playing experience at either the professional or NCAA level and/or coaching experience; knowledge of and commitment to adherence to NCAA rules academic advising, recruiting, promotion, and fundraising; knowledge of social media and being able to use all social media outlets to help promote the women's golf program; and exceptional communication and public speaking skills[.]

PREFERRED QUALIFICATIONS

Master's degree; professional golfing experience[.]

The petitioner's RFE-response also included the following list of duties with estimated percentages of worktime that they would involve:

1. Assist the head coach in the organization and supervision of practices workouts, and tournaments. 30%

2. Assist in implementing a successful recruiting program to attract student athletes to attend the [petitioning university]. 25%

3. Attend and organize fundraising events to help raise funds for the Women's Golf Program and [the petitioner's] Athletic Department. 20%

4. Create, develop, and maintain all social media for the women's golf program (i.e., Facebook, Twitter, Instagram). 15%

5. Attend and participate in department and staff meetings as requested/required. 10%

B. Analysis

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

To satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) the evidence in the record of proceeding must establish that the petition's particular position is one for which the minimum requirement for entry is normally a baccalaureate or higher degree in a specific specialty, or its equivalent.

We recognize the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[2] We agree with the petitioner's observation in its RFE-response that the *Handbook* cannot be relied upon as the sole basis for determining whether a particular position qualifies as a specialty occupation. However, absent evidence to the contrary, we do accept pertinent information in the *Handbook* as reliable and probative evidence with regard to the occupational groups it addresses. This regard for the *Handbook* does not preclude a petitioner from presenting whatever additional evidence it may wish from any other source, which, we would, of course, also consider and evaluate for its relevance, credibility, and probative value.

As the petitioner submitted a Labor Condition Application (LCA) certified for use with a position within the Coaches and Scouts occupational group (SOC Code 27-2022), we reviewed the pertinent chapter in the *Handbook*, aptly titled "Coaches and Scouts." That chapter addresses the entry requirements for this occupational group as follows:

> Coaches and scouts typically need a bachelor's degree. They must also have extensive knowledge of the sport. Coaches typically gain this knowledge through their own experiences playing the sport at some level. Although previous playing experience may be beneficial, it is not required for most scouting jobs.
>
> **Education**
>
> High schools typically hire teachers at the school for most coaching jobs. If no suitable teacher is found, schools hire a qualified candidate from outside the school. For more information on education requirements for teachers, see the profile on high school teachers.
>
> College and professional coaches must usually have a bachelor's degree. *This degree can typically be in any subject.* However, some coaches may decide to study exercise and sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine.
>
> Scouts must also typically have a bachelor's degree. Some scouts decide to get a degree in business, marketing, sales, or sports management.
>
> [Emphasis added.]

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Coaches and Scouts," http://www.bls.gov/ooh/entertainment-and-sports/coaches-and-scouts.htm#tab-4 (last visited June 30, 2015).

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[2] All of the references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site http://www.bls.gov/OCO/. The excerpt of the *Handbook* regarding the duties and requirements of the referenced occupational category is hereby incorporated into the record of proceeding.

The *Handbook* reports that although college and professional coaches must usually have a bachelor's degree, the degree can typically be in any subject. As such, although some coaches may decide to study a sports-related field or physiology, kinesiology, or sports medicine, the *Handbook* does not indicate that such bachelor's degree in a specific specialty, or its equivalent, is normally a minimum requirement.

The *Handbook's* information indicates that the Coaches and Scouts occupational category does not comprise a class of positions for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Moreover, the record's two letters from the petitioner state the proffered position's minimum educational requirement as a bachelor's degree, without specifying any particular major or academic concentration.

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

The first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) 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 at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement.

Further, we note that 10 of the record's 13 vacancy announcements from other colleges and universities for coaching positions state the minimum educational qualification as a bachelor's degree, without referencing a particular major or academic concentration. In the remaining three job advertisements, the minimum educational requirement was stated as "Bachelor's Degree preferred," "Bachelor's degree in an appropriate area of specialization," and "A bachelor's degree is required but a master[']s degree or LPGA/PGA membership is preferred." This documentation does

not reflect that a bachelor's or higher degree in a specific specialty, or its equivalent, is a common requirement for the proffered position. The same holds true for the letters submitted from other colleges and universities. The letters from and the all attest to the need for a bachelor's degree, but they do not state that the degree be in any specific specialty. In her letter, the head women's golf coach at the states that, "when going through the hiring process for an Assistant Women's Golf Coach, I look for specific bachelor's degrees (for example, Business/Administration, Communications, Sports Management)." While the letter indicates a preference for certain bachelor's degrees, but the preference is for such a wide range of majors as to not reflect a requirement for a degree in a specific specialty.

In short, the petitioner has not submitted sufficient evidence to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty, or its equivalent.

The terms of this alternative prong are only met if the petitioner shows that the proffered position's level of complexity or uniqueness is such that the position can only be adequately handled by a person possessing a closely-related body of highly specialized knowledge that he or she gained by attaining at least a bachelor's degree in a specific specialty, or its equivalent.

Thus, to satisfy this alternative prong the petitioner must not only demonstrate the relative complexity or uniqueness of the position as compared to others in the occupational classification that can be performed by persons without at least a bachelor's degree in a specific specialty. The petitioner must also show that the position's particular complexity or uniqueness and the need for a person that can practically and theoretically apply at least a bachelor's degree level of a specific specialty's body of highly specialized knowledge commensurate with that level of complexity or uniqueness. This the petitioner has not done.

We find that the evidence of record is not sufficiently detailed to distinguish the proffered assistant-coach position from those in what the *Handbook's* information indicates to be a wide range of coaching positions that are held by persons without at least a bachelor's degree in a specific specialty, or its equivalent, closely related to those positions. In addition, we find that the evidence of record does not establish a nexus between the proffered position as described in the record and a body of highly specialized knowledge conveyed only by completion of a particular college-level or higher curriculum in a specific specialty. The petitioner has not shown the necessity for a person equipped with such knowledge. It has not demonstrated how an established curriculum leading to a

baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the evidence of record does not demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 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

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, USCIS reviews the petitioner's past recruiting and hiring practices, information regarding employees who previously held the position, as well as any other documentation submitted by a petitioner in support of this criterion.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. 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 as the minimum for entry into the occupation as required by the Act. According to 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.*

The array of degrees listed by the petitioner as acceptable for assistant coaches is diverse. The majors or academic concentrations for the five positions are identified as (1) psychology, (2) business administration, (3) accountancy MBA, (4) psychology, and (5) speech communication. All of the record's job-postings for assistant coaches specify "a Bachelor's degree" as the minimum

educational requirement. None specify a particular major or academic concentration. Accordingly, the evidence of record establishes no more than a history of requiring a bachelor's degree, without a common regard for the particular curriculum and associated body of knowledge upon which the degree was based. Such evidence does not satisfy this criterion. As indicated in our discussion of the statutory and regulatory requirements of the H-1B specialty occupation program, the essential feature of an H-1B specialty occupation is the requirement for at least a bachelor's degree *in a specific specialty,* or its equivalent.

We note that the petitioner's RFE-reply cites *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "'[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.'"

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). For the aforementioned reasons, however, the petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks.

In any event, the petitioner has not established that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.[3] We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

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[3] The district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the service center director's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

In the briefing letter on appeal, dated December 17, 2014, the petitioner asserts that USCIS approval of other H-1B petitions for coaching positions constitutes a policy with which USCIS adjudicating officers must comply. The petitioner describes the Director's denial of the petition "as abandoning previously established policy of accepting the university-level coaching position as a specialty occupation." The petitioner does not cite any agency documents as setting such a policy. Further, the petitioner cites no legal authority for the proposition that non-precedent decisions constitute agency policy.[4] 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 petitioner also asserts that the "outcome [it] seeks is in accordance with prior AAO approvals for positions similar to the one proffered in this case." On appeal, the petitioner expressly acknowledges that our prior, non-precedent decisions which it cites do not have precedential value. However, we also find that the petitioner has not established that its case is similar to those coaching cases that it cites as sustained by us on appeal. The record of proceeding does not contain copies of the visa petitions that the petitioner claims were previously approved. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See Hakimuddin v. Dep't of Homeland Sec.*, No. 4:08-cv-1261, 2009 WL 497141, at *6 (S.D. Tex. Feb. 26, 2009); *see also Larita-Martinez v. INS* 220 F.3d 1092, 1096 (9th Cir. 2000) (stating that the "record of proceeding" in an immigration appeal includes all documents submitted in support of the appeal). In making a determination of statutory eligibility, we are limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The preponderance of the evidence standard requires us to base our decisions not just upon the title and claimed duties of a proffered position, but also upon the particular factual circumstances of each case and upon weighing each piece of evidence about the proffered position for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence. As such material evidence is not part of the record now before us, the petitioner has not established that the decisions which it cites were substantively the same from an H-1B adjudicative perspective as the position now before us.

Further, if the petitioner had established that the petitions it cited as approved by the Service Center Director on initial review or as later approved pursuant to our action on appeal were substantially the same as the one now before us, that fact would not merit our sustaining this appeal. We first note that the Director's decision does not indicate whether USCIS reviewed the prior approvals of the other nonimmigrant petitions. However, if the previous nonimmigrant petitions were approved based on substantially the same assertions and documentation that are contained in the current record, the approvals would constitute material and gross error. 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). 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). As our decision here indicates, in the instant

[4] *See* 8 C.F.R. § 103.3(c) (types of decisions that are precedent decisions binding on all USCIS officers).

matter the petitioner has not met its burden in establishing that the position proffered here qualifies as a specialty occupation. The record of proceeding does not include sufficient probative evidence to establish that the proffered position 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 the Act.

Also, as the director properly reviewed the record before and as that record did not include the records of the prior approvals, it was impracticable for the director to provide the petitioner with an explanation as to why the prior approvals were erroneous.

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

Satisfaction of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*) requires that the petitioner establish that the proffered position's specific duties be so specialized and complex that their performance would require knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The evidence of record does not establish that the proffered position's specific duties are so specialized and complex as to require the application of knowledge usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. Further, based upon the petitioner's submissions and its assertions on appeal, it appears that the petitioner views this criterion as only requiring that the petitioner show that the nature of the proffered position would require coaching-related skills (such as abilities to effectively communicate, to relate well to student athletes and others associated with women's golf at the collegiate level, and to manage business aspects of coaching) at an enhanced level that is a product of the overall education process in attaining a bachelor's or higher degree in any field. Neither that view nor the evidence of record presented to support it, comports with the requirement, conveyed by reading the criterion in conjunction with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), that the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) means not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the performance requirements of the proffered position.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*)

For the reasons related in the preceding discussion, the petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position

qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

III. BENEFICIARY'S QUALIFICATIONS

We need not examine the beneficiary's qualifications, because the evidence of record does not establish that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

IV. CONCLUSION

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.