



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-S-, INC

DATE: SEPT. 9, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a software consulting, training, and development company, seeks to temporarily employ the Beneficiary as a "computer programmer" under the H-1B nonimmigrant classification for specialty occupations. See Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, California Service Center, denied the petition. The Director determined that the evidence of record did not establish that the Beneficiary is qualified to perform services in a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director's decision was erroneous and overlooked previously submitted evidence.

Upon *de novo* review, we will remand the matter to the Director.

I. BENEFICIARY QUALIFICATIONS

The Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary is qualified to perform the services in a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether a beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. Cf. *Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].") In the instant case, the record of proceedings does not establish that the proffered position qualifies as a specialty occupation. Thus, the matter will be remanded to the Director for review and issuance of a new decision.

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II. SPECIALTY OCCUPATION

A. Legal Framework

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) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). USCIS has consistently interpreted 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 proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

B. Proffered Position

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “computer programmer.” In a letter of support, the Petitioner explained that it is developing a new software product, [REDACTED] and that the

Beneficiary “will work solely” on this in-house project. The Petitioner stated that it “aims to bring this product suite to the market in late 2015 and is currently in the process of engaging with potential clients to solidify the systems requirements and conduct prototype building.” The Petitioner further explained that it “forecasts a consistent need for IT resources including but not limited to Systems Analysts, [and] Programmer/Analysts . . . for the duration of this development effort and during the support and maintenance beyond 2015.”

In the same letter, the Petitioner submitted a lengthy list of duties for the proffered position, described as that of a “computer programmer analyst,” which include “business process analysis and design responsibilities,” “development responsibilities,” “test planning and execution responsibilities,” and “product support responsibilities.”

The Petitioner submitted a separate “Itinerary of Services” for the Beneficiary which listed the following job duties for the position titled “computer programmer analyst” (verbatim):

- Review of Business requirements and technical specifications.
- Preparation of test documentation and definition of test strategies.
- Working with team members to define test objectives, design test cases, perform test execution, and manage defects.
- Well versed with complete software development Life cycle (SDLC) and its integration With QA methodology.
- Work with all stakeholders on the QA effort.
- Preparing Product Backlog with user stories and generating the Release Backlog.
- Preparation & Review of Test Plan, Test Design specification, Test Scenarios and Test Cases during Sprints and getting it signed-off from the User.
- Perform Regression Testing, execute test cases and analyze results.
- Resolve the defects created by the Business & Testing teams.
- Used Team Foundation Server for logging and tracking defects.
- Actively participated with configuration team in meetings addressing user stories and involved in preparing Business Requirement Document.
- Involved in daily Scrum/Stand-up meetings after each sprint.
- Driven Defect Triage calls and coordinated with various cross-commit team in resolving defects.
- Developed automated Regression test scripts for various SAP modules like MM, SD, CRM, HR, FI/CO and PP modules using QTP.
- Enhance QTP scripts by creating parameters, output values, Checkpoints, regular expressions and Descriptive programming.
- Developing, documenting, and revising system design procedures, testing procedures, and User training.
- Perform Functional, Regression, User Acceptance, Integration, Load and Performance using Load Runner, QTP, and Quality Center.
- Work with the development team ensuring that consistent design standards reflecting best practices applied.

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- Work with project teams and customer service teams as a technical resource and contribute to successful implementation.

In a letter submitted in response to the Director's request for evidence (RFE), the Petitioner clarified that its [REDACTED] system is a proprietary software technology targeting the hospitality industry. The Petitioner also submitted an affidavit by [REDACTED] Account Manager of the Petitioner, who confirmed that this is the project to which the Beneficiary will be assigned. [REDACTED] further noted that the [REDACTED] system is "an ideal solution for hotel chains as well as independent hotels, motels, resorts and Inns," and that in promoting its system, it has made "significant efforts to continue negotiating services contracts with major hotel chains such as [REDACTED] etc.," noting specifically that it hoped to reach an agreement with [REDACTED] in the coming months.

C. Analysis

We find that the evidence of record is insufficient to demonstrate that the duties of the proffered position are in fact associated with a specialty occupation. That is, the Petitioner has not submitted sufficient, credible evidence to establish that the [REDACTED] project is a *bona fide* in-house project of the Petitioner, and that the Beneficiary will be exclusively assigned to it.

Preliminarily, we note discrepancies and concerns regarding the documentary evidence submitted by the Petitioner. The Petitioner asserts that the Beneficiary will be employed as a computer programmer on its [REDACTED] project, which it claims is specifically tailored to the hospitality industry, and which will benefit large hotel chains as well as smaller, independent outlets such as motels, inns, and resorts. In support of this assertion, the Petitioner submitted a document entitled "Technical Handbook," which it claims is the "Blue Print" for its [REDACTED] system. A large portion of this document, however, is not tailored specifically toward the hospitality industry as claimed by the Petitioner, but rather appears to pertain to the hospital/healthcare industry.

For example, section 1.1.9, "Guest operation," states in part "[p]atients, family members and guests can enjoy the Internet from most patient rooms at Hospital." Section 1.2.6, "Expense management," states that "[t]rained 'Professional Financial Advocates' work proactively with patients to explain their insurance benefits, ensure that [a]ll paperwork is organized and explained, help resolve any billing or claims issues that arise, and facilitate bill [p]ayment." Section 1.2.8 discusses "[t]he mission of every public hospital in Nigeria." Section 1.2.9 discusses "a local area network which communicates between the School of Medicine and the Hospital which . . . [has] access to the National Research Network [REDACTED] in France)." These sections' contents do not correspond to the Petitioner's description of its [REDACTED] system, and have no apparent relationship to the hospitality industry.

Notably, section 1.2.6 references a solution entitled [REDACTED] which public records reveal is a proprietary medical expense management service solution that targets the healthcare industry,

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developed by the company [REDACTED]. The Petitioner has not explained or documented its relationship to [REDACTED] in this matter. Moreover, the entire section 1.2.6 in the Petitioner's "Technical Handbook" appears to have been copied virtually verbatim from [REDACTED] whitepaper [REDACTED] available at [REDACTED] website.²

These aspects of the Petitioner's documentation greatly undermine the validity of the Petitioner's claims regarding the true nature of the intended work for the Beneficiary, and preclude us from determining that *bona fide* in-house H-1B caliber work exists for the Beneficiary for the requested validity period, or that such work constitutes specialty occupation employment. "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Further, although the Petitioner submitted additional documentation with respect to the [REDACTED] project, the documents do not sufficiently establish that specialty occupation work is available for the duration of the Beneficiary's requested employment period. Specifically, the Petitioner did not submit credible, objective documentation corroborating its claims regarding the Beneficiary's assignment to the [REDACTED] project. In particular, the document [REDACTED] contains no references to the Beneficiary or to the proffered position. In fact, this document contains a table entitled "Phase I Budget" listing the resources needed for "Phase I" of the project. However, this table does not include a computer programmer or computer programmer analyst position as one of the required resources.³ The document also does not contain schedule, budget, or resource information beyond "Phase I," which is expected to end on February 17, 2016. The absence of this information is significant, in that the Petitioner requested employment dates from September 12, 2015, until September 11, 2018.

Without additional, reliable information regarding the specific project to which the Beneficiary will be assigned that covers the duration of the period of employment requested, we are not able to ascertain what the Beneficiary will do, where the Beneficiary will work, as well as how this will impact circumstances of his relationship with the Petitioner. "[G]oing 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 Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

¹ For more information, visit [REDACTED] which demonstrates that [REDACTED] is a proprietary technology platform developed nearly two decades ago by another company.

² The whitepaper can be accessed at [REDACTED] website, available at [REDACTED] (last visited Sept. 7, 2016).

³ The Petitioner interchangeably refers to the proffered position as a "computer programmer" and a "computer programmer analyst."

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Moreover, even if it were established that the Beneficiary will be assigned to the [REDACTED] project, the evidence still does not sufficiently describe the duties to be performed by the Beneficiary. That is, while the Petitioner submitted a lengthy list of job duties in its initial support letter, the "Itinerary of Services" contains only a fraction of those job duties (i.e., only those duties listed as "development responsibilities"). The Petitioner has not explained why its support letter and itinerary contain different lists of duties. "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. at 591. Of the job duties that appear in both the support letter and the itinerary, we observe that several of them are vaguely worded, such as "Work with the development team ensuring that consistent design standards reflecting best practices applied," and "Work with project teams and customer service teams as a technical resource and contribute to successful implementation." These job duties, as presently stated, do not adequately convey the actual tasks the Beneficiary will perform within the context of the [REDACTED] project (e.g., what is meant by the phrase "work with"), the complexity of such tasks, and the knowledge necessary to perform them.

Consequently, we find that the evidence of record does not demonstrate the substantive nature of the proffered position and its constituent duties.⁴ The Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, which therefore precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for 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.

Nevertheless, we will review the Petitioner's general description of duties and the evidence of record to determine whether the proffered position as described would qualify for classification as a specialty occupation.⁵

1. First Criterion

To that end and to make our determination as to whether the employment described above qualifies as a specialty occupation, we turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the

⁴ Further, without full disclosure, we are unable to determine whether the requisite employer-employee relationship with exist between the Petitioner and Beneficiary:

⁵ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

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minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁶

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Programmers," corresponding to the Standard Occupational Classification code 15-1131 at a Level I wage.⁷ The *Handbook* subchapter entitled "How to Become a Computer Programmer" states in pertinent part: "Most computer programmers have a bachelor's degree in computer science or a related subject; however, some employers hire workers with an associate's degree."⁸ The *Handbook* indicates that a bachelor's degree in computer science may be common, but not that it is a *requirement* for entry into these jobs, indicating that associate's degrees are also acceptable prerequisites.⁹

In support of the appeal, the Petitioner submits a letter from [REDACTED] associate professor of computer applications and information systems at the [REDACTED]. In his letter, [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position, which he refers to as a "computer programmer analyst"; (2) lists the duties proposed for the Beneficiary; and (3) states that these duties require at least a bachelor's degree in computer science, engineering, or a related area (or the equivalent). We carefully evaluated [REDACTED] assertions in support of the instant petition but, for the following reasons, determined his letter does not have significant weight in this matter.

⁶ All of our references are to the 2016-17 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁷ We will consider the Petitioner's classification of the proffered position at a Level I wage (the lowest of four assignable wage levels) in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

⁸ U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Computer Programmers," <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited Sept. 7, 2016).

⁹ We will withdraw the Director's comment that "[a]s the proffered position is a computer programmer, the beneficiary must possess a baccalaureate degree, or its equivalent, in computer science as noted in [the *Handbook*]."

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First, [REDACTED] expertise regarding current industry degree requirements for computer programmer or computer programmer analyst positions is not established in the record. His supporting documentation indicates that most of his experience over the past 30 years has been in an academic setting as a faculty member within a university's school of business. Other than briefly stating that he has "had the opportunity over the years to become familiar with" industry and recruitment standards, [REDACTED] has not provided additional, detailed information to establish the source of his expertise in the field. [REDACTED] opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has conducted any research or studies pertinent to the current educational requirements for such positions (or parallel positions) in the Petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. Without further clarification and evidence, it is unclear how his education, training, skills or experience would render him an "expert" in the field.

Moreover, [REDACTED] indicates that his assessment is based upon a position description provided by the Petitioner. But [REDACTED] does not demonstrate in-depth knowledge of the Petitioner's operations, its specific [REDACTED] project, and how the duties of the proffered position would actually be performed in the context of this project. Even if [REDACTED] could be considered an "expert" in the field, the Petitioner still has not demonstrated that [REDACTED] possessed the requisite information to adequately assess the nature of the position and appropriately determine the position's minimum educational requirement.

For the reasons discussed, we find that [REDACTED] opinion letter lends little probative value to the matter here. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is "not in accord with other information or is in any way questionable.").

The Petitioner has not provided sufficient documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

2. Second Criterion

The second criterion presents two, alternative prongs: "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[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

a. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed above, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty or its equivalent. We incorporate by reference our 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. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry attesting that such firms “routinely employ and recruit only degreed individuals.” See *id.* Therefore, based upon a complete review of the record, we conclude that the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

b. Second Prong

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

Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

Moreover, the general descriptions of the proffered duties do not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Rather, the duties the Petitioner ascribed to the proffered position indicate a need for a range of technical knowledge in the computer/IT field, but do not establish any particular level of formal,

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postsecondary education leading to a bachelor's or higher degree in a specific specialty (or its equivalent) as minimally necessary to attain such knowledge.

Further, the LCA submitted by the Petitioner indicates that the proffered position is a Level I (entry) wage, which, as noted above, is the lowest of four assignable wage levels.¹⁰ Without additional evidence, the record of proceedings does not indicate that the proffered position is so complex or unique, as such a position would likely be classified at a higher-level, which requires a significantly higher prevailing wage. For all of the above reasons, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

3. Third Criterion

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.

The Petitioner states that it was established in 2004, and currently employs over 30 IT professionals. The Petitioner has not specified how many of its 30 plus employees are in a computer programmer or computer programmer analyst position, and how many such individuals the company has employed in the past. Thus, it is not possible to determine how representative this claimed number of employees is of the Petitioner's employment practices for the proffered position.

The Petitioner further claims that it currently employs five "Computer Program Analysts in H-1B status, developing [REDACTED] Despite the Petitioner's claim that they are assigned to the same project upon which the Beneficiary will work, the record does not include sufficient evidence of the specific project assignments the individuals granted H-1B approval were given, and does not include evidence of the specific work these individuals performed. The record also does not include corroborating evidence of these individuals' claimed educational credentials. Accordingly, we do not have sufficient information to compare the proffered position to the positions previously approved for H-1B employment. In any event, 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.¹¹ Temporary Alien Workers Seeking

¹⁰ The Petitioner's designation of this position as a Level I, entry-level position indicates that it is a comparatively low-level position compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

¹¹ While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a

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Classification Under the Immigration and Nationality Act, 55 Fed. Reg. 2,606, 2,612 (Jan. 26, 1990) (to be codified at 8 C.F.R. pt. 214).

Here, the record of proceedings is insufficient to establish that the Petitioner normally requires a bachelor's or higher degree in the specific specialty, or its equivalent, for the proffered position. The Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

4. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific 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 a specific specialty, or its equivalent.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The Petitioner does not establish how the duties of its computer programmer elevate the proffered position to a specialty occupation. We again refer to our comments regarding the insufficient evidence of the Beneficiary's job duties and assignment, as well as to the implications of the Petitioner's designation of the proffered position at a Level I (entry) wage level. The evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Because the Petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not established that the proffered position qualifies as a specialty occupation.¹² For this reason, the

token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

¹² The Petitioner noted that USCIS approved other petitions that had been previously filed on behalf of five other employees for its [redacted] project. The Director's decision does not indicate whether the prior approvals of the other nonimmigrant petitions were reviewed. 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. We are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 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 Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

Again, 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. Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 Fed. Reg. 2,606, 2,612 (Jan. 26, 1990) (to be codified at 8 C.F.R. pt. 214). 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 Tex. A&M Univ. v. Upchurch*, 99 F. App'x 556 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a

petition as currently constituted cannot be approved and this matter must be remanded to the Director for issuance of a new decision.

III. CONCLUSION

As discussed, the evidence of record does not demonstrate that the proffered position is a specialty occupation. Consequently, the matter will be remanded to the Director for further review and issuance of a new decision in accordance with the applicable statutory and regulatory provisions. The Director may request any additional evidence considered pertinent to the new determination.

ORDER: The decision of the Director, California Service Center, is withdrawn. The matter is remanded to the Director, California Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of S-S-, Inc*, ID# 17927 (AAO Sept. 9, 2016)

court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of a beneficiary, we would not be bound to follow the contradictory decision of a service center. *See La. Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).