U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24062569

Date: DEC. 21, 2022

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to employ the Beneficiary 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.

Having concluded that the Petitioner did not establish the certified ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers (LCA) they submitted in support of the Form I-129, Petition for a Nonimmigrant Worker (petition) properly corresponded with the offered position, the California Service Center Director denied the petition. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Before filing a petition for H-1B classification, the regulation requires petitioners to obtain certification from the U.S. Department of Labor's (DOL) that the organization has filed an LCA in the occupational specialty in which its foreign national personnel will be employed. 8 C.F.R. § 214.2(h)(4)(i)(B)(*1*). The purpose of DOL's LCA wage requirement is "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers." *See* Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-56). *See also Aleutian Cap. Partners, LLC v. Scalia*, 975 F.3d 220, 231 (2d Cir. 2020) (quoting 20 C.F.R. § 655.0(a)(1) and finding that a primary goal of U.S. non-immigrant foreign worker programs like the H-1B Program is to ensure that "the employment of the foreign worker in the job opportunity will not adversely affect the wages or working conditions of similarly employed U.S. workers.").

The LCA also serves to protect H-1B workers from wage abuses. A petitioner submits the LCA to DOL to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment, or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a). *See also Venkatraman v. REI Sys., Inc.*, 417 F.3d 418, 422 & n.3 (4th Cir. 2005); *Patel v. Boghra*, 369 F. App'x 722, 723 (7th Cir. 2010); *Michal Vojtisek-Lom & Adm'r Wage & Hour Div. v. Clean Air Tech. Int'l, Inc.*, 2009 WL 2371236, at *8 (Dep't of Labor Admin. Rev. Bd. July 30, 2009).

Furthermore, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(*2*) provides that a petitioner must state that it will comply with the terms of the LCA. While DOL certifies the LCA, U.S. Citizenship and Immigration Services (USCIS) "determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the labor condition application is a specialty occupation . . . , and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification." 20 C.F.R. § 655.705(b). *See also Matter of Simeio Solutions*, 26 I&N Dec. 542, 546 n.6 (AAO 2015).

USCIS may consider DOL regulations when adjudicating H-1B petitions. *See Int'l Internship Programs v. Napolitano*, 853 F. Supp. 2d 86, 98 (D.D.C. 2012), *aff'd sub nom. Int'l Internship Program v. Napolitano*, 718 F.3d 986 (D.C. Cir. 2013) ; *ITServe All., Inc. v. Dep't of Homeland Sec.*, 590 F. Supp. 3d 27, 39 (D.D.C. 2022) (citing *Simeio Solutions*, 26 I&N Dec. at 546 n.6 and 20 C.F.R. § 655.705(b)); *United States v. Narang*, No. 19-4850, 2021 WL 3484683, at *1 (4th Cir. Aug. 9, 2021) (finding that USCIS adjudicators evaluate whether the employment proposed in an H-1B petition will conform to the wage and location specifications in the LCA); *Parzenn Partners, LLC v. Baran*, No. 19-CV-11515-ADB, 2020 WL 5803143, at *8–9 (D. Mass. Sept. 29, 2020) (finding that USCIS operates within its authority when it either considers or evaluates DOL's wage level regulation when determining if an LCA corresponds with and supports an H-1B petition).

In a similar vein, USCIS possesses the authority to evaluate whether the proffered position's duties are in accordance with the occupational classification on the LCA, and if not, to determine under which occupational titles the responsibilities correspond. *See GCCG Inc v. Holder*, 999 F. Supp. 2d 1161, 1167–68 (N.D. Cal. 2013) (in which the court agreed with USCIS that a large portion of the beneficiary's duties were most similar to those found within the Bookkeeping, Accounting, and Auditing Clerks occupation, rather than within the Accountants Standard Occupational Classificational (SOC) code.) Effectively, this reiterates the USCIS' ability to determine whether the LCA corresponds with and supports the petition.

"In construing a statute or regulation, we begin by inspecting its language for plain meaning." *Sullivan v. McDonald*, 815 F.3d 786, 790 (Fed. Cir. 2016) (quoting *Meeks v. West,* 216 F.3d 1363, 1366 (Fed.Cir.2000)). "[W]e attempt to give full effect to all words contained within that statute or regulation, thereby rendering superfluous as little of the statutory or regulatory language as possible." *Sullivan*, 815 F.3d at 790 (quoting *Glover v. West,* 185 F.3d 1328, 1332 (Fed.Cir.1999)). The most basic canon of statutory—as well as regulatory—construction consists of interpreting a law or rule by examining the literal and plain language. *See Carbon Fuel Co. v. USX Corp.*, 100 F.3d 1124, 1133

(4th Cir. 1996). The inquiry ends with the plain language as well, unless the language is ambiguous. *United States v. Pressley*, 359 F.3d 347, 349 (4th Cir. 2004).

Here, the plain language of the regulation is dispositive: USCIS is authorized to determine the corollary nature of the offered position's elements as represented in an LCA when compared with those same elements as represented on the Form I-129, as well as the Petitioner's actual position requirements. And to clarify, USCIS does not purport to exercise any authority over the LCA. Instead, we are ensuring that the claims made on the LCA sufficiently align to those made within the H-1B petition.

Furthermore, the Act prescribes DOL's limited role in reviewing LCAs stating that "[u]nless the [DOL] Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall provide the certification . . . ." Section 212(n)(1)(G)(ii) of the Act. USCIS precedent also states:

> DOL reviews LCAs "for completeness and obvious inaccuracies" and will certify the LCA absent a determination that the application is incomplete or obviously inaccurate. Section 212(n)(1)(G)(ii) of the Act. In contrast, USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition.

Simeio Solutions, 26 I&N Dec. at 546 n.6. It is unclear how USCIS is to carry out its responsibilities to determine whether the LCA corresponds with and supports the H-1B petition without performing such a review. To illustrate, by simply submitting the LCA to DOL without also obtaining a prevailing wage determination, a petitioner has only received DOL's certification that the form is complete and does not contain obvious inaccuracies. *Id.*[1] In fact, DOL "is not generally permitted to investigate the veracity of the employer's attestations on the LCA prior to certification." *Aleutian Cap. Partners, LLC*, 975 F.3d at 225–26 (quoting *Cyberworld Enter. Techs., Inc. v. Napolitano*, 602 F.3d 189, 193 (3d Cir. 2010)).

Further, when DOL certifies an LCA, it does not perform any meritorious review of an employer's claims to ensure the information is true. DOL's Office of Inspector General, 06-21-001-03-321, *Overview of Vulnerabilities and Challenges in Foreign Labor Certification Programs* 11 (2020) (describing the DOL Employment and Training Administration's role as "simply rubber-stamping during the application certification process"). In other words, employers do not receive an evaluative determination from DOL on whether the LCA's content and the specifics were appropriate and accurate.

In order to determine whether the "attestations and content" (e.g., the SOC code and the wage level) as represented on the LCA corresponds with the information pertaining to the offered position as represented on the Form I-129, we follow DOL's guidance, which provides a five-step process for determining the appropriate SOC code and wage level. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009) (DOL guidance), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

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[1] Employers my obtain a prevailing wage determination by taking the additional step of submitting Form ETA-9141 (Application for Prevailing Wage Determination) to DOL's National Prevailing Wage Center.

An employer "reaffirms its acceptance of all of the attestation obligations by submitting the LCA to [USCIS] in support of the Petition for Nonimmigrant Worker, Form I-129, for an H-1B nonimmigrant." 20 C.F.R. § 655.705(c)(1). When comparing the SOC code or the wage level indicated on the LCA to the claims associated with the petition, USCIS does not purport to supplant DOL's responsibility with respect to wage determinations. There may be some overlap in considerations, but USCIS' responsibility at its stage of adjudication is to ensure that the content of the DOL-certified LCA "corresponds with" the content of the H-1B petition.

Additionally, it is important for USCIS to ensure the employer has selected the SOC code on the LCA that most closely matches the proffered position for reasons that affect H-1B statutory and regulatory requirements. First, the wrong SOC code can direct USCIS to evaluate an inapplicable occupational title or occupation. It is the occupation itself that we evaluate to decide if it requires a "theoretical and practical application of a body of highly specialized knowledge," and "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." Section 214(i)(1) of the Act. Therefore, an incorrect SOC code could mean we would not be able to properly evaluate whether a petitioner has satisfied the statute's definition of a specialty occupation.

Second, we also cannot provide a proper analysis under two H-1B regulatory requirements. Those requirements fall under the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*) and (*2*). 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) requires a petitioner to demonstrate that a baccalaureate or higher degree—or its equivalent—is normally the minimum requirement for entry into the particular position. Because education requirements may differ markedly from one occupational classification to the next, the incorrect SOC code (e.g., occupational classification) can skew the analysis. Also, 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) requires that the degree requirement is common to the industry in parallel positions among similar organizations. Because the degree requirement that is considered common to the industry for one occupation may also be distinct in comparison to others, USCIS must ensure the SOC code specified on the LCA is the one that most closely matches the position in the petition.

It is also important to ensure the correct wage level is specified on the LCA because even if an employer designates the correct SOC code and satisfies the H-1B related requirements, if the wage level is lower than the position's requirements warrant, USCIS still cannot approve the H-1B petition because employers are required to compensate H-1B workers at *the higher* of either the prevailing wage for the occupational classification in the area of employment, or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a). Stated differently, were USCIS to allow an employer to compensate an H-1B worker at a wage level that is lower than the position's requirements warrant, it would not be compensating that individual at the necessary prevailing wage, nor the actual wage it pays to similarly situated employees.

In summary, when filing an LCA and an H-1B petition, a petitioner subjects itself to two authorities: (1) to DOL through the certification process, or through a prevailing wage determination, and (2) to USCIS by way of our authority to ensure that the LCA corresponds with and supports the petition.

II. ANALYSIS

The Petitioner initially provided the position's description with seven bullet points, and provided additional details relating to each duty in response to the Director's request for evidence. For the sake of brevity, we will not quote the duties; however, we note that we have closely reviewed and considered them.

After reviewing the record, we have determined that the Petitioner has not demonstrated eligibility under the H-1B program. Specifically, we observe that the Petitioner did not utilize the correct SOC code on the LCA, which prevents USCIS from providing a purposeful analysis of whether the position qualifies as a specialty occupation. Based on this issue, we conclude that the Petitioner has not established that the LCA corresponds with and supports the petition.

Without an LCA that properly corresponds with and supports the petition, we cannot make a determination on the specialty-occupation question based on the current record. Specifically, we cannot provide an accurate specialty-occupation analysis for the offered position under the SOC code 25-2021 corresponding to the occupational title "Elementary School Teachers, Except Special Education" (elementary school teachers) if the duties the Petitioner provided more closely relate to a different SOC code. Even though this is not an issue in this petition, the use of an incorrect SOC code on the LCA poses the potential for an employer to pay a lower than required wage.

We offer several examples beginning with the H-1B requirements. First, the statutory and regulatory definitions of a specialty occupation focus on the broader occupation as a whole, and the use of an incorrect occupational code may result in an erroneous decision, or one that does not properly assess the actual nature of the occupation in which a beneficiary would engage. Second, the education requirements we consider under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) (a qualifying degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position) may differ markedly from one occupational classification to the next.

Likewise, under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) a qualifying degree requirement considered common to the industry in parallel positions among similar organizations for one occupation may also be distinct in comparison to others. It would not be a valuable use of USCIS resources to analyze the position requirements under an incorrect SOC code. These two factors alone, that hinder USCIS' ability to provide a salient analysis, preclude this petition's approval. The third concern relates to paying a foreign national the required wage, such that employing them does not adversely impact U.S. workers' wages or working conditions. *Aleutian Cap. Partners*, 975 F.3d at 231 (quoting 20 C.F.R. § 655.0).

We begin addressing the Petitioner's contention that the Director mischaracterized their business when it indicated the organization was a music store that offers music lessons. The Petitioner notes it is actually a music school that also sells musical instruments and accompanying materials. Here, the Petitioner draws a distinction without a difference in their claim that they are a music school and not a music store. While we acknowledge their business that primarily offers musical lessons and even what they characterize as a structured curriculum, their "continued dispute calls to mind the classic phrase 'you say tomato, I say tomahto,' and warrants no greater analysis than this mainstream observation . . . ." *Medtronic Vascular Inc. v. Advanced Cardiovascular Sys., Inc.*, No. C 06-1066

PJH, 2007 WL 4557794, at *12 (N.D. Cal. Dec. 21, 2007). The bottom line, and the Director's overall point, was the organization is a company and not a public or private elementary school.

Next we turn to analyze the SOC codes associated with this case. The Occupational Information Network (O*NET) provides the following definition for the elementary school teachers SOC code: "Teach academic and social skills to students at the elementary school level." The O*NET provides the following definition for the Self-Enrichment Teachers SOC code: "Teach or instruct individuals or groups for the primary purpose of self-enrichment or recreation, rather than for an occupational objective, educational attainment, competition, or fitness."

While the offered position's duties incorporated some functions associated with the elementary school teacher's occupational category, a significant portion of the duties appear to relate to Self-Enrichment Teachers under the SOC code 25-3021. When an employee's responsibilities can fall into two occupational classifications—one that qualifies as a specialty and one that does not—the non-specialty duties must actually be equivalent to the specialty duties to qualify for the same treatment. *GCCG Inc*, 999 F. Supp. 2d at 1165 (citing *Occidental Eng'g Co. v. INS*, 753 F.2d 766, 769 (9th Cir.1985).

To offer additional information on the SOC codes the Director discussed, elementary school teachers typically require a bachelor's degree in elementary education and licensure or certification for those at public schools. Bureau of Labor Statistics, DOL *Occupational Outlook Handbook* (*Handbook*) Kindergarten and Elementary School Teachers (Oct. 4, 2022), https://www.bls.gov/ooh/education-training-and-library/kindergarten-and-elementary-school-teachers.htm#tab-4. The O*NET places this occupation in a Job Zone 4 category that requires considerable preparation and reflects most in this occupation need a bachelor's degree. *Elementary School Teachers, Except Special Education*, O*NET OnLine (Dec. 13, 2022), https://www.onetonline.org/link/details/25-2021.00.

However, the *Handbook* does not include a distinct profile for Self-Enrichment Teachers. There are occupational categories the *Handbook* does not cover in much, if any, detail suggesting that for at least some occupations, little meaningful information could be developed. *Data for Occupations Not Covered in Detail*, Bureau of Labor Statistics (Dec. 21, 2022), https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm. The O*NET assigns the Self-Enrichment Teachers occupation a Job Zone 3 category. This groups it among occupations for which medium preparation is needed. More specifically, most occupations in this zone "require training in vocational schools, related on-the-job experience, or an associate's degree." *See* O*NET OnLine Help Center, O*NET OnLine (Dec. 13, 2022), http://www.onetonline.org/help/online/zones. Therefore, if the offered position should be classified under the Self-Enrichment Teachers SOC code, the requirements for it would equate to training in a vocational school, related on-the-job experience, or an associate's degree.

After we performed a closer review of the offered position's duties, we find that we do not agree with the Petitioner that it selected the correct SOC code on the LCA. Although some of the duties bear some similarities to a portion of the duties of the elementary school teachers SOC code listed in the O*NET, they do not sufficiently align to corroborate the claim that the SOC code on the LCA was the correct one. Our primary disagreement with the Petitioner's contentions is that it does not appear they followed the DOL guidance under the first of a five-step process DOL specifies for determining the appropriate SOC code and wage level, which is to select the SOC code that best corresponds with the offered position.

To further explain why the elementary school teachers SOC code was not correct, the O*NET includes several responsibilities for occupations that it either lists as being core, supplemental, or not relevant. O*NET OnLine Help, O*NET OnLine (Dec. 13, 2022), https://www.onetonline.org/help/online/scales. The O*NET includes several *core* responsibilities that fall squarely within the elementary school teachers SOC code, but despite the Petitioner's assertions, it did not demonstrate the offered position incorporates sufficiently similar functions.

Accompanying the appeal, the Petitioner presents a table listing: (1) the offered position's duties; (2) some basic duties from the *Handbook* profile for Kindergarten and Elementary School Teachers; and (3) tasks from the O*NET entry for the elementary school teachers SOC code. The core elementary school teachers O*NET tasks the Petitioner claims are related to the offered position's duties—but for which it failed to demonstrate are primary functions of the offered position—include:

1. "Instruct students individually and in groups, using teaching methods such as lectures, discussions, and demonstrations."

    - Although the Petitioner and the opinion letter (discussed below in this decision) generally refer to using varying teaching methods, neither explain how someone occupying the offered position will actually engage in the teaching methods the O*NET identifies. For instance, how one in their music teacher position would engage in lectures as opposed to following basic and pre-made lesson plans.

2. "Prepare, administer, and grade tests and assignments to evaluate students' progress."

    - The Petitioner compared this O*NET task with its position duty to organize and prepare students for recitals by assisting them with selecting pieces and by providing critiques and recommendations during practice. First, the O*NET task is listed as a core category with an importance rating of 81 percent of how important this descriptor is to this occupation.

      However, the Petitioner only indicated its corollary duty would comprise approximately three percent of the position's time, which does not appear to be a core function, nor does it appear to rank similarly of importance. Performing specialty occupation duties that are incidental to the primary functions—functions that are not specialty occupation duties—is insufficient to establish that the duties to be performed, or the position itself, qualify as a specialty occupation. *GCCG Inc*, 999 F. Supp. 2d at 1168. Second, the Petitioner did not explain how providing critiques and recommendations to music students sufficiently correlates with the O*NET descriptor of preparing, administering, and grading tests and assignments.

3. "Establish and enforce rules for behavior and procedures for maintaining order among the students."

    - Although the Petitioner offers individual or group lessons, they did not demonstrate the manner in which those occupying its music teacher positions perform this function in

a manner sufficiently similar to those under the elementary school teachers SOC code.

4. "Guide and counsel students with adjustment or academic problems or with special academic interests."

    - Not only is this O*NET task absent from the Petitioner's chart of similarities between its position and those in the elementary school teachers SOC code in the O*NET, but this task also refers to teaching students the "academic and social skills" discussed within the O*NET definition for the elementary school teacher SOC code. The Petitioner did not explain the manner in which one in the offered position would also perform this function.

5. "Confer with other staff members to plan and schedule lessons promoting learning, following approved curricula."

    - The Petitioner also failed to list this core O*NET task in their chart.

The DOL guidance explains that on an LCA, a job's SOC code is identified by selecting the O*NET job description "that most closely matches the employer's request" from a list of similar occupations. DOL's Board of Alien Labor Certification Appeals has interpreted this guidance to instruct employers to select the occupation that best corresponds to the employer's job offer. *See* the Board of Alien Labor Certification Appeals decisions: *Maestro Soccer, LLC*, 2018-PWD-00001, at 3 (Dec. 21, 2017); About Women OB/GYN, PC, 2017-PWD-00002, at 3 (Jan. 27, 2017);*Gen. Anesthesia Specialists P'ship Med. Grp. (GASP)*, 2013-PWD-00005, at 6 (Jan. 28, 2014); *Emory Univ.*, 2011-PWD-00001, at 6–7 (Feb. 27, 2012). The DOL guidance further states:

> The selection of the O*NET-SOC code should not be based solely on the title of the employer's job offer. The NPWHC should consider the particulars of the employer's job offer and compare the full description to the tasks, knowledge, and work activities generally associated with an O*NET-SOC occupation to [ensure] the most relevant occupational code has been selected.

Here, the Petitioner did not demonstrate that it considered both the elementary school teachers SOC code and the one for Self-Enrichment Teachers, then listed the occupation that best corresponds to their job offer.

We also observe the lack of a state-mandated licensure or certification for the offered position, but those are required for kindergarten or elementary school teachers for public institutions. *See* the *Handbook*, Kindergarten and Elementary School Teachers (Oct. 4, 2022), https://www.bls.gov/ooh/education-training-and-library/kindergarten-and-elementary-school-teachers.htm#tab-4. For any certification process the Petitioner has mentioned relating to the music teacher position, they have not demonstrated such a certification is similar to that required of public school teachers which includes a bachelor's degree while attaining a minimum grade point average. *Handbook*, Kindergarten and Elementary School Teachers, *supra*.

The *Handbook* also differentiates between kindergarten elementary school teachers and other types of teachers. It specifically states that kindergarten elementary school teachers instruct young students on basic subjects such as math and reading in order to prepare them for middle school. And, while it indicates there are kindergarten and elementary school teachers who specialize in subjects such as music, the Petitioner has not demonstrated that its position is essentially equal to that of kindergarten and elementary school music teachers, which requires a bachelor's degree in elementary education and certification.

The Petitioner also relies on the opinion letter from [redacted] the owner of a education credentials evaluation company. While [redacted] background is in education, he does not appear to possess experience in music education. He does not provide sufficient information to establish his expertise on the practices of organizations seeking to hire "music teachers." Without further clarification, it is unclear how his education, training, skills, or experience would translate to expertise regarding the current recruiting and hiring practices of an enterprise engaged in providing music lessons. [redacted] does not sufficiently establish how his background in adult education qualifies him to determine employers' minimum entry requirements for jobs such as the offered position.

Even setting that issue aside, we observe some other issues negatively affecting the evidentiary value of his letter. For instance, some of the opinion letter's content is unrelated to this petition as the author states he is qualified to review the nature of the position of Direct Care Professionals because he is a former professor in the department of counseling and psychology. It appears [redacted] included information in his opinion letter that has no bearing on the position at hand. This also tends to diminish the persuasive nature that his letter might have in these proceedings.

We further find that [redacted] offers conclusory statements that he does not adequately explain and that are not corroborated by the rest of the record. As an example, he states:

> This position would typically require competency in instructional planning, implementation, and assessment; methods of music instruction; child development and motivation; and the foundations of teaching and learning. The requisite knowledge, skills, and experiences associated with these competencies would typically be developed during the completion of a Bachelor's or Master's Degree in elementary or music teacher education typically housed in Schools of Education or Music.

While we welcome and acknowledge [redacted] expertise, his evaluation includes little to no analysis of how he reached these conclusions. A second example is found in [redacted] opinion in which he states: "Professional preparation and training for this position, typically delivered through teacher education programs or degree programs in schools of music, would include coursework designed to prepare elementary music educators." The record lacks adequate materials relating to "teacher education programs or degree programs in schools of music" to corroborate the author's statements. The conclusion the Petitioner requests us to draw from [redacted] opinion is not self-evident, and we are not required to accept cursory or primarily conclusory statements as demonstrating eligibility. *Innova Sols., Inc. v. Baran*, 338 F. Supp. 3d 1009, 1023 (N.D. Cal. 2018); *1756, Inc. v. Att'y Gen*, 745 F. Supp. 9, 17 (D.D.C. 1990).

Where an opinion letter does not cite to the source of its contents, is not corroborated by other probative evidence, but instead generally offers conclusory and unsubstantiated statements, USCIS is

justified in determining that such material is not persuasive. *Sagarwala v. Cissna*, 387 F. Supp. 3d 56, 65–66 (D.D.C. 2019). The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the foreign national's eligibility. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008).[2]

We further note that [redacted] does not discuss why elementary school teacher positions should require a bachelor's degree in elementary education, nor does he draw a nexus between that necessity and the Petitioner's claims that the offered position also requires a baccalaureate or higher degree in a specific specialty, or its equivalent. In [redacted] conclusion section he simply notes some overlap between the offered position's duties and some of the duties of elementary school teachers and makes his conclusion from those similarities that, because elementary school teachers require a bachelor's degree due to the complexity of the overall position, so does the offered position.

Similar to the petitioning organization [redacted] does not sufficiently explain or clarify which of the offered position's duties, if any, would be so specialized and complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Also lacking from [redacted] opinion letter is an adequate discussion of certification requirements for elementary school teachers and any correlating requirement for the offered position.

For all these reasons, we do not find that [redacted] opinion letter constitutes probative evidence towards satisfying the Petitioner's burden of proof. It is not arbitrary or capricious to accord limited weight to opinion letters provided the agency considers them. It is unnecessary that the degree of the agency's weight accorded correlates with that of the Petitioner, provided the agency considers the content and grants an appropriate value. *Visinscaia v. Beers*, 4 F. Supp. 3d 126, at 134 (D.D.C. Dec. 16, 2013). Ultimately, the Petitioner has not demonstrated that—despite some similarities in a portion of the offered position's duties and those found under the SOC code they designated on the LCA—the responsibilities of their position mandates a baccalaureate or higher degree in a specific specialty, or its equivalent.

Finally, the Petitioner notes that USCIS approved other petitions filed for the same or for a similar position in which the SOC code on the LCAs for those cases was that of elementary school teachers. 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 adjudicating body. The Director observed that USCIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior

[2] We note that one element of the *V-K-* decision was overruled within *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015); however, this does not affect the portion of *V-K-* we cite to here. The *Z-Z-O-* decision clearly limited its adverse treatment of the *V-K-* decision to the issue of "an Immigration Judge's predictive findings of what may or may not occur in the future . . ." *Z-Z-O-*, 26 I&N Dec. at 590, which was related to the standard of review when evaluating an Immigration Judge's findings relating to an asylum applicant's reasonable fear claims. The *Z-Z-O-* decision made no mention of the evidentiary weight of expert testimony. The limit to the overruling nature of *Z-Z-O-* is illustrated within a footnote in which the BIA stated that other than the standard of review for predictive factual findings, it did not address and would not disturb other conclusions in the *V-K-* decision. *Z-Z-O-*, 26 I&N Dec. at 593 n.3. Consequently, the portion of the *V-K-* decision cited above remains effective.

approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). We note 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).

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). 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 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*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001); *see also Open Society Institute, v. USCIS*, No. CV 19-3620 (RDM), 2021 WL 4243403, at *20 (D.D.C. Sept. 17, 2021) (finding that where a service center's *approvals* do not contain any reasoning or rationale with which to grapple, this office only needs to offer an adequate explanation for why a filing party's failed to establish its eligibility). And we have offered such an explanation here.

As the Petitioner has not demonstrated the LCA corresponds with and supports the petition, this issue is dispositive of the matter and the petition cannot be approved. Consequently, we will not discuss the Petitioner's remaining assertions on appeal.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.