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U.S. Citizenship
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FILE: WAC 06 152 53150 Office: CALIFORNIA SERVICE CENTER Date: SEP 14 2007

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner imports and distributes select liquors, claims to employ 17 personnel, and to have a gross annual income of approximately \$10,000,000. It seeks to employ the beneficiary as an account executive to prepare, plan, and direct organizational functions. Accordingly, the petitioner endeavors to classify the beneficiary 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 record of proceeding before the AAO contains: (1) the Form I-129 filed April 11, 2006 and supporting documentation; (2) the director's April 21, 2006 request for evidence (RFE); (3) the petitioner's June 20, 2006 response to the director's RFE; (4) the director's July 18, 2006 denial letter; and (5) the Form I-290B and counsel's brief and resubmission of documents already in the record. The AAO reviewed the record in its entirety before reaching its decision.

On July 18, 2006, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation and that the petitioner had not established that the beneficiary is eligible to perform the duties of a specialty occupation.

The first issue before the AAO is whether the petitioner has established that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 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, the 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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner states that it is seeking the beneficiary's services as an account executive. In an April 7, 2006 letter appended to the petition, the petitioner indicated the beneficiary's employment would consist of the following job duties:

- (1) Analyze marketing trends in the liquor industry with regard to location and brands in the New York Tri-State Area.
- (2) Establish and maintain cooperative relationships with wholesalers with a view to expanding the market share for [the petitioner's] brands.
- (3) Confer with management and support personnel to coordinate effective months [sic] of product placement.
- (4) Study the objectives, promotional policies, and needs of the organization to develop public relations strategies that will influence public opinion.

In a June 20, 2006 response to the director's RFE, the petitioner slightly revised the beneficiary's proposed duties to include:

- Plan and direct development and communication of information and events to maintain favorable public and customer perceptions of [the petitioner's] brands. 40%
- Arrange public appearance[s], on-spot demonstrations, contests, and exhibits for customers and the public to increase product awareness. 20%
- Establish and maintain cooperative relationships with vendors, suppliers, and retailers, ensuring that accounts are favorably maintained. 10%
- Confer with other management personnel to identify trends and key groups to provide advice on business decisions. 20%
- Study the goals and projections of the company and develop strategies that will influence public opinion and promote brand awareness. 10%

The petitioner added that a regional sales manager who is responsible for sales promotion throughout the Eastern region would supervise the beneficiary. The petitioner did not disclose the academic qualifications of the sales manager. The petitioner noted that the vice-president/national sales manager who has a degree in communications would supervise the regional sales manager. The petitioner also noted that an individual with a bachelor's degree had previously held the proffered position, but that its records did not indicate that individual's area of specialization.

The petitioner also provided a position evaluation dated July 12, 2006 prepared by [REDACTED] a former Dean and Professor of Management of the School of Business, Public Administration & Information Science at the Brooklyn, New York Campus of Long Island University and a current Professor of Management in the MBA Program at the "University of Maryland University College." [REDACTED] noted that his report was based on: a review of the job duties of the position as provided to CIS; additional details provided by the petitioner's counsel; photocopies of the beneficiary's resume, academic file, work experience and profile; financial and background documentation related to the petitioner; excerpts from the Sunday New York Times Classified Advertising Help Wanted Section; excerpts from the Internet Web Pages - monster.com and hotjobs.com; excerpts from *The Encyclopedia of Careers*, Volume Two; and excerpts from *The Big Book of Jobs*, VGM Career Horizons, Illinois, 1996.

[REDACTED] opined: "the aforementioned job duties and responsibilities are primarily business-related tasks in the field of marketing development, promotion, and advertising which is a very challenging area of business marketing, that requires university level knowledge acquired in a four-year program of academic study culminating in, at a minimum, a Bachelor's Degree in Communication, Marketing, Journalism, Advertising, Public Relations or a related field." [REDACTED] further opined that the knowledge required to perform the described duties would be acquired in university-level communications, computer, marketing, advertising, public relations, and economics courses and that the beneficiary's courses in corporate design, broadcast design, business globalization, consumer culture, history of industrial design, design for promotion, graphic communication and various other design courses and her work experience in marketing and promotion of liquor products is relevant academic and work experience to the proffered position. [REDACTED] also shared his research of the numerous advertisements for positions with titles of account executive, marketing communication coordinator, marketing director, product manager, brand manager, segment marketing manager, and communications director. [REDACTED] noted, excluding the job positions that in his opinion were not parallel to the proffered position, that the vast majority of positions among those addressing educational requirements, expected an account executive to hold an appropriate bachelor's degree and in most cases the degree needed to be in communications, marketing, journalism, advertising, public relations or a related field. [REDACTED] further noted that *The Encyclopedia of Careers and Vocational Guidance* stated a college degree is "essential" for most careers in marketing and that *The Big Book of Jobs* indicated that the academic requirements for various types of marketing positions vary by product line and market and most firms place greater emphasis on a strong educational background. [REDACTED] also referenced and attached a classified advertisement from the New York Times that he indicated was very similar to the proffered position that required a marketing and sales coordinator position to have a baccalaureate degree in communication or marketing.

[REDACTED] concluded that job duties and responsibilities required of the proffered position located in the New York, New Jersey, and Connecticut area are of a complexity to require an applicant to normally possess

a minimum of a U.S. Bachelor's Degree in an area of study such as Communications, Marketing, Journalism, Advertising, Public Relations, or a related field of study and that his additional research led him to believe that the degree requirement is normal in the industry in parallel positions among similar organizations.

In a July 18, 2006 decision, the director denied the petition determining that the Department of Labor's *Occupational Outlook Handbook (Handbook)* did not indicate that occupations in advertising, marketing, promotions, public relations, and sales managers' positions necessarily required a baccalaureate level of education in a specific specialty as a normal minimum for entry into the occupation. The director also found that the petitioner had not submitted documentation, letters, or affidavits from firms or individuals in the wholesale of fine wine and liquor industry establishing that a degree in a specific field of study is common to this industry for parallel positions in organizations similar to the petitioner. The director noted the petitioner's statement that it had previously employed an individual in this position with a bachelor's degree but determined that the petitioner had failed to substantiate that the individual's degree was in a specific specialty. The director also determined that the record was insufficient to demonstrate the specialized and complex nature of the proposed position.

On appeal, counsel for the petitioner asserts the director relied solely on the *Handbook's* discussion of marketing managers and public relations managers and produced an unreasonable interpretation of the *Handbook's* report when construing the *Handbook's* statement¹ that while most of the occupations require a four-year degree, some do not. Counsel contends that the duties and the complexity of the proffered position should be considered and were not. Counsel also cites an unpublished decision regarding a market researcher's position approved by the AAO as a specialty occupation. Counsel asserts that CIS did not consider the evidence submitted in response to the director's RFE and that the director's decision was arbitrary and erroneous.

The AAO acknowledges that the director did not specifically list the evidence submitted in response to his RFE when issuing the July 18, 2006 decision. However, the director's determination that the record does not contain documentation, letters, or affidavits from firms or individuals in the wine and liquor industry is correct. Although the director could have provided a more detailed explanation regarding each of the documents submitted in response to the RFE, the director's ultimate conclusion is proper. The AAO will more thoroughly discuss the evidence in the record to provide a more complete understanding of the deficiencies found within the information submitted in response to the director's RFE.

The issue is whether the petitioner has provided sufficient evidence to establish that its proffered position of account executive is a specialty occupation, an occupation that requires a baccalaureate or higher degree, in a specific specialty that is directly related to the proffered position. In this matter the petitioner has not provided such evidence.

The AAO turns first to an analysis of the duties of the proffered position and the occupation that includes the described duties. To determine whether a particular job qualifies as a specialty occupation, CIS does not

¹ The AAO notes that the *Handbook* does not contain this statement, but rather counsel has taken this statement from the Department of Labor's *Dictionary of Occupational Titles (DOT)* summary report on marketing managers and public relations managers.

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. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations when considering the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. As the director pointed out, the occupation described in this matter most closely aligns with that of a marketing manager or public relations manager. The *Handbook* discusses these positions under the heading of advertising, marketing, promotions, public relations, and sales managers. The *Handbook* reports:

The objective of any firm is to market and sell its products or services profitably. . . . Advertising, marketing, promotions, public relations, and sales managers coordinate the market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities.

* * *

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, including *product development managers* and *market research managers*, they estimate the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets Marketing managers develop pricing strategy to help firms maximize profits and market share while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users.

Public relations managers supervise public relations specialists. (See the *Handbook* statement on public relations specialists.) These managers direct publicity programs to a targeted audience.

* * *

Sales managers maintain contact with dealers and distributors

The *Handbook* reports: "[p]ublic relations specialists – also referred to as communications specialists and media specialist, among other titles – serve as advocates for businesses, nonprofit associations, universities, hospitals, and other organizations, and build and maintain positive relationships with the public." For small organizations, the public relations specialists "contact people, plan and research, and prepare materials for distribution. They also may handle advertising or sales promotion work to support marketing efforts."

In this matter, the petitioner's job description indicates the beneficiary will spend 60 percent of her time planning and directing development and communication to maintain favorable public and customer perceptions and arranging public appearances, demonstrations, contests, and exhibits to increase public product awareness. These duties suggest the individual in this position will be directing publicity programs to a particular audience and will be handling sales promotion work to support marketing efforts. The beneficiary's time spent conferring with management to identify trends and key groups and developing strategies to influence public opinion and promote brand awareness suggest the beneficiary will also be providing some marketing duties. The beneficiary's maintenance of cooperative relationships with vendors, suppliers, and retailers resembles the duties of an individual in sales, promotions, and marketing who ensures that a favorable impression of the branded product is maintained. Thus, the general description of the beneficiary's duties suggests that she will be primarily involved in promoting and marketing the petitioner's products in support of or in conjunction with the petitioner's sales force. The position's location in the petitioner's organizational hierarchy, reporting to the petitioner's regional sales manager who is responsible for sales promotion, substantiates this conclusion.

The *Handbook* discusses the educational requirements imposed on individuals who seek employment in the advertising, marketing, promotions, public relations, and sales manager positions as follows:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy among other subjects, is acceptable. However, requirements vary depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous

* * *

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists

The *Handbook* does not identify a specific degree requirement for employment in the occupations of marketing manager, public relations manager, or salesperson/manager. Likewise, the *Handbook* does not specify a defined standard for entry into a public relations career. Although the *Handbook* indicates a broad liberal arts background in various degrees may be acceptable for entry into advertising, marketing, promotions, public relations, and sales and a college degree combined with public relations experience is considered excellent preparation for public relations work, the *Handbook* does not indicate a college degree is normally required or further that a college degree in a specific discipline is required. The AAO notes that when a job, like that of a marketing or public relations manager, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation.

Matter of Michael Hertz Associates, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study.

The AAO also observes that the first criterion is not satisfied by an employer's preference, as an employer's preference is not synonymous with the normally required language of this criterion. The variety of methods available to enter into a position involving marketing, public relations, promotion, or sales demonstrates that such a position does not normally require a baccalaureate or higher degree or its equivalent. Since there must be a close corollary between the required specialized studies and the position, the requirement or acceptance of a degree with a generalized title, or a degree without a specific area of study relating to the proffered position, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Further, the AAO notes that a restatement of the *Handbook's* description of a particular occupation is insufficient to establish a position as a specialty occupation. Such a generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. The petitioner in this matter has not detailed the actual work to be performed for this position rather than describing a general occupation.

The AAO acknowledges the position evaluation dated July 12, 2006 prepared by [REDACTED] but finds that the position evaluation fails to establish the proffered position as a specialty occupation under the first criterion. First, [REDACTED] seems to combine the normally required language of the first criterion with the language of the fourth criterion that focuses on the complexity of the nature of the petitioner's specific duties. It is thus unclear whether [REDACTED] opinion is that all positions involving marketing, public relations, promotion, or sales normally require a baccalaureate or higher degree or its equivalent or only the nature of the specific duties of the petitioner's proffered position requires a baccalaureate or higher degree.² Second, if it is [REDACTED] opinion that the minimum educational requirement for an occupation as described by the petitioner is a baccalaureate degree, the AAO respectfully disagrees. The *Handbook* offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. As indicated above, the *Handbook* does not report that a degree requirement in a specific discipline is required for the position of marketing manager, or for positions incorporating promotions, public relations, and sales managerial duties. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). [REDACTED] opinion is insufficient to overcome the *Handbook's* report that not all marketing, public relations, promotions, or sales employment requires a degreed individual or an individual with a degree in a specific discipline.

² The AAO will further discuss Dr. Petrello's opinion in relation to the fourth criterion below.

The AAO also acknowledges the inclusion on appeal of an excerpt from the Department of Labor's *DOT* and the Specific Vocational Preparation (SVP) rating for the position of a marketing manager. However, the AAO does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, the record does not demonstrate that the occupation of a marketing manager or public relations manager would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The petitioner has not established that the position of a marketing manager, a public relations manager, or a position involving promotions or sales is a position that normally requires a baccalaureate or higher degree or its equivalent for entry into the position. Accordingly, the AAO finds that the petitioner has not established that the proffered position is a specialty occupation pursuant to the requirements of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To establish its proffered position as a specialty occupation under the second criterion, a petitioner must prove that a specific degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that only an individual with a degree in the specific specialty can perform the duties of the position.

The AAO has considered [REDACTED] review of numerous advertisements and his conclusion that the employers of a majority of the open positions addressing educational requirements,³ excluding those that in his opinion were not parallel to the proffered position, expected an account executive to hold a bachelor's degree. However, [REDACTED] does not offer an analysis or comparison of the duties of the advertised positions to the proffered position and [REDACTED] does not explain how he determined that some of the advertised positions were parallel to the proffered position. Neither does [REDACTED] identify the method he used to exclude the advertised positions that he considered not parallel to the proffered position. In addition, the AAO observes that the petitioner's description of the proffered position is generic and does not detail how the successful incumbent's duties relate specifically to the petitioner's business operations. If the advertised positions [REDACTED] considered parallel to the proffered position contained similarly general descriptions as the proffered position, it would not be possible to confirm that the advertised positions were specialty occupations. Regarding the classified advertisement from the New York Times, a review does not find any points of comparison between the advertised position and that of the proffered position. Concluding that a majority of employers expect an account executive to hold a bachelor's degree without a complete analysis and discussion of all the advertisements and their descriptions is insufficient to substantiate such a conclusion.

³ [REDACTED] apparent exclusion of advertised positions that do not address educational requirements also casts doubt on a conclusion that there is an industry standard regarding the requirement of a baccalaureate degree. [REDACTED] fails to inform of the number of advertisements that did not address educational requirements.

Moreover, [REDACTED] does not address the similarity of any of the employers advertising for account executives, marketing communication coordinator, marketing director, product manager, brand manager, segment marketing manager, and communications director to the petitioner's 17-person import and distribution business. Thus, it is not possible to conclude that the advertising entities are similar to the petitioner's organization. The AAO has also considered [REDACTED] review of *The Encyclopedia of Careers and Vocational Guidance* and *The Big Book of Jobs* as those tomes relate to careers in marketing. However, neither resource establishes an industry standard for marketing positions; rather both resources recognize while there is a benefit associated with a college degree in marketing, the academic requirements for such positions vary by product line and market.

The advertisements submitted as a supplement to [REDACTED] opinion, the resources cited by [REDACTED] and [REDACTED] conclusory opinion do not establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. Again, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. at 791. The petitioner has not satisfied the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The record establishes that the proposed duties do not exceed the scope of a typical marketing manager, public relations manager, or a position involved in sales and public relations. Upon review of the duties of the proffered position, the AAO does not find any specific duty described that is so complex or unique that would demonstrate that the proffered position requires an individual with a degree to perform it. The record does not contain other information regarding the petitioner's business operations sufficient to establish that the petitioner's proffered position is distinguishable from similar but non-degreed marketing, promotion, sales, or public relations positions. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether the employer normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, CIS often reviews the employment history of the position, including the names and dates of employment of those employees with degrees who previously held the position, as well as the petitioner's hiring practices with regard to similar positions. In this matter although the petitioner notes an individual with a bachelor's degree previously held the position, the petitioner does not provide documentary evidence to substantiate the employment of this individual, his or her academic credentials, or that the bachelor's degree was in marketing or a discipline specifically related to marketing, promotion, or public relations. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. The AAO acknowledges counsel's assertion that CIS should give deference to the employer's view that a position is a specialty occupation. However, the AAO must still determine 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. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. Accordingly, as the petitioner has not provided a basis for establishing the position as a specialty occupation pursuant to the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner has not established the proffered position as a specialty occupation under this criterion.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific discipline.

The AAO has reviewed the general description of the proffered position's duties and does not find any specific duty that is complex or specialized. The individual in the proffered position is required to plan and direct development and communication of information; to arrange public appearances, demonstrations, contests, and exhibits; and to develop strategies - all in an effort to promote and maintain public opinion and brand awareness. The position also includes responsibility for conferring with management to identify trends and for establishing relationships with vendors, suppliers, and retailers. The AAO does not find that any of these duties would require a higher degree of knowledge and skill than would normally be required of marketing managers or public relation managers whose business responsibilities require them to monitor trends and consumer behavior and to see that the firm's customers are satisfied. Nor do these duties represent an amalgam of jobs that would require the beneficiary to possess skills and qualifications beyond those of a marketing or public relations manager. That the beneficiary may be required to work at advertising, promotion, and sales tasks as well as marketing the petitioner's product does not elevate the position to a specialty occupation. The petitioner has not described specific tasks that require the theoretical and practical application of a body of highly specialized knowledge attained only through a four-year course of study resulting in a bachelor's or higher degree in a specific specialty. The job duties described, when reviewed as a whole, do not reflect the specialization or complexity that require the individual performing the tasks to have attained a bachelor's degree or the equivalent.

Regarding [REDACTED] evaluation of the proffered position, the AAO notes that [REDACTED] relied on the same description as submitted to CIS but that [REDACTED] also referenced additional information from the petitioner's counsel, the beneficiary's past work history, and the petitioner's financial and background documentation when concluding that the duties required university-level knowledge. Counsel does not indicate what additional details, if any, were provided to [REDACTED] and what other financial and background information relating to the petitioner were provided to [REDACTED] other than the information already in the record. Thus the AAO is unable to determine if it has the same or similar information before it and is thus unable to evaluate the accuracy or adequacy of [REDACTED] opinion in this regard. Again, 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. at 165.

Moreover, the AAO agrees that the generally described duties of the proffered position comprises duties in the field of marketing development, promotion, and advertising and recognizes that this is a challenging area

of business. The AAO, however, does not find the nature of any of the generally described duties so complex or specialized that the duty requires university-level knowledge acquired in a four-year program of academic study. ██████████ does not describe any particular duty that pertains directly to the petitioner's business of importing and distributing liquor products that demonstrates that the proffered position incorporates duties that are more specialized and complex than the duties of a typical marketing, promotions, or public relations manager, positions that do not normally require a degree. The record does not contain sufficient specific details about the complexity of the duties in relation to the petitioner's actual business operations to substantiate ██████████ conclusions. Again, there is an inadequate factual foundation established to support the opinion as it relates to the position offered by the petitioner. The AAO finds that the opinion is not substantiated by the record and finds that the opinion is not probative in establishing that the position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). See *Matter of Caron International*, 19 I&N Dec. at 791.

The AAO also notes that ██████████ apparently considered the beneficiary's work experience in marketing when attempting to establish the proffered position as a specialty occupation. However, it is not a beneficiary's experience that makes a position a specialty occupation, rather it is the nature of the specific duties as those duties pertain to the petitioner's business operations that establish a position as a specialty occupation.

Regarding counsel's reference to unpublished decisions, counsel has not furnished evidence that establishes that the facts of the instant petition are analogous to those in the unpublished decisions. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Upon review of the totality of the evidence submitted in support of the petition, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition on this issue.

The second issue in this matter is whether is whether the petitioner has established that the beneficiary is qualified to perform the duties of an individual performing marketing, advertising, promotions, public relations, and sales duties.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or

- (C) (i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record contains a copy of the beneficiary's diploma from the Parsons School of Design awarding the beneficiary a bachelor of fine arts degree. The record also contains a copy of the beneficiary's transcript showing the college's acceptance of 47 credit hours transferred from the beneficiary's attendance at the Pratt Institute and an additional six semesters of coursework at the Parsons School of Design. The beneficiary's coursework focused on design studies. The beneficiary's coursework does not include any marketing courses and includes only two courses possibly related to public relations and sales – "Business, Globalization & Publi, [sic]" and "Buying In: Consumer Culture."

The record also contains the position evaluation dated July 12, 2006 prepared by [REDACTED] Professor of Management in the MBA Program at the University of Maryland University College who references the beneficiary's coursework in corporate design, broadcast design, business globalization, consumer culture, history of industrial design, design for promotion, graphic communication and various other design courses and her work experience in marketing and promotion of liquor products.

In the petitioner's June 20, 2006 letter in response to the director's RFE, the petitioner indicated that the beneficiary previously interned with a distributor of fine wines and liquors, doing on-site promotions, visual presentations, and creating brand awareness. The record does not contain further documentary evidence of the beneficiary's internship. The petitioner also noted that the beneficiary has an approved H-1B visa from Eber-NDC, LLC and indicated that the beneficiary works at Eber-NDC, LLC analyzing marketing trends and developing strategies to promote focus brands. The record contains a copy of the beneficiary's notice of

previously approved H-1B classification, but does not contain documentary evidence from Eber-NDC, LLC detailing the beneficiary's duties.

The director determined that the beneficiary's general degree in fine arts with a concentration in communications is insufficient to show that the beneficiary's academic courses related to a position in a specialty occupation. On appeal, counsel re-submits the beneficiary's transcript, references the beneficiary's prior approval in an H-1B classification, and asserts that the beneficiary's degree and coursework qualify her as a professional.

The AAO acknowledges the beneficiary's degree in fine arts and the *Handbook's* report that a liberal arts degree is acceptable for entry into advertising, marketing, promotions, public relations, and sales positions. As the *Handbook* indicates that a broad liberal arts background will prepare a person for entry into the field, the AAO finds the beneficiary qualified to perform the duties of the occupation. The petition may not be approved, however, as the record does not establish the position as a specialty occupation.

Finally, the AAO acknowledges that a different petitioner previously received an H-1B classification for the beneficiary. However, this record of proceeding does not contain the supporting evidence submitted in that matter. In the absence of all of the corroborating evidence contained in the record of that proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine that the petition is parallel to the offered position. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Further, if the other nonimmigrant petition was approved based on identical facts that are contained in the current record, that approval would be in violation of paragraph (h) of 8 C.F.R. § 214.2, and would constitute material error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS 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).

The petition will be denied and the appeal dismissed for the above stated reason. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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