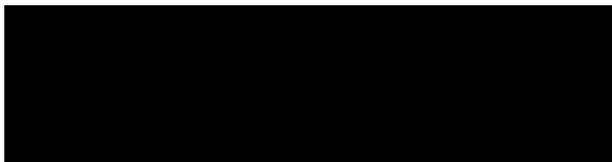




U.S. Citizenship
and Immigration
Services



FILE: EAC 03 005 52194 Office: VERMONT SERVICE CENTER

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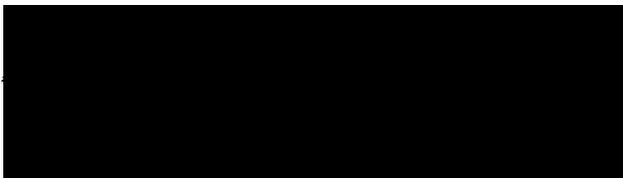
DEC 10 2004

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:



PUBLIC COPY

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, Director
Administrative Appeals Office

identifying information used to
prevent clearly warranted
invasion of personal privacy

DISCUSSION: The director of the Vermont 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 is a computer firm that designs, develops, markets and provides technical support for computer software and other computer products. It seeks to hire the beneficiary as a software systems support specialist. The director denied the petition because he determined the proffered position did not meet the criteria required for classification as a specialty occupation and that the beneficiary did not qualify to perform services in a specialty occupation. On appeal, counsel submits a brief and additional documentation, asserting that the director's decision was arbitrary, capricious and an abuse of discretion.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with supporting evidence. The AAO reviewed the record in its entirety before reaching its decision.

The initial issue before the AAO is the determination of whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. 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 critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a software systems support specialist. Evidence of the beneficiary’s duties includes: the Form I-129; a September 27, 2002 support letter from the petitioner accompanying the Form I-129; and the petitioner’s response to the director’s request for evidence.

In its September 27, 2002 letter, the petitioner stated the beneficiary’s duties as follows:

- Provide technical assistance with software support to customers arising in connection with its Korean software systems and/or programs;
- Provide technical expertise on product usage, ensuring that the integrity and functionality of its products are maintained; and
- Identify systems usage errors and instruct clients to correct such errors while maintaining sensitivity to specific client needs.

Additional information on the position’s duties was provided in the petitioner’s response to the director’s request for evidence, specifically that the beneficiary would coordinate the construction and maintenance of computer systems; provide technical assistance and support to customers; configure, implement and install software systems; and ensure that the integrity and functionality of the petitioner’s products was maintained through the use of the required software programs and other system techniques.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor’s *Occupational Outlook*

Handbook (Handbook), on which the AAO routinely relies for the educational requirements of particular occupations, reports 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.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In his denial, the director stated that the proffered position most closely resembled the occupation of computer support specialists and systems administrators, as described in the 2002-2003 edition of the *Handbook*. Following its own review, the AAO also concludes that the description of the proffered position offered by the petitioner, both at the time of filing and in its response to the director's request for evidence does appear closely aligned to that of computer support specialists and systems administrators. The 2004-2005 edition of the *Handbook* states the following with regard to this employment category:

The explosion of computer use has created a high demand for specialists to provide advice to users, as well as day-to-day administration, maintenance, and support of computer systems and networks.

Computer support specialists provide technical assistance, support, and advice to customers and other users. This occupational group includes technical support specialists and help-desk technicians. These troubleshooters interpret problems and provide technical support for hardware, software, and systems....

Technical support specialists are troubleshooters, providing valuable assistance to their organization's computer users.... Technical support specialists install, modify, clean, and repair computer hardware and software.

Technical support specialists...may run automatic diagnostics programs to resolve problems. They also may write training manuals and train computer users how to properly use new computer hardware and software. In addition, technical support specialists oversee the daily performance of their company's computer systems and evaluate software programs for usefulness.

Help-desk technicians assist computer users with the inevitable hardware and software questions not addressed in a product's instruction manual. Help-desk technicians field telephone calls and e-mail messages from customers seeking guidance on technical problems. In responding to these requests for guidance, help-desk technicians must listen carefully to the customer, ask questions to diagnose the nature of the problem, and then patiently walk the customer through the problem-solving steps.

The *Handbook* also comments on the educational or training background required of those individuals who wish to work as computer support specialists:

Due to the wide range of skills required, there are many paths of entry to a job as a computer support specialist.... While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree.

In response to the director's request for additional evidence and on appeal, the petitioner has asserted that its proffered position requires an individual with a bachelor's degree in computer science or related degree, or the equivalent, to perform the duties of a software systems support specialist. While the petitioner has clearly stated its educational requirements for its position, the AAO notes that it is not the petitioner that dictates whether a position qualifies as a specialty occupation under Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). That determination can only be made through the application of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Were CIS limited solely to reviewing a petitioner's 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 required the individual to have a baccalaureate or higher degree.

The AAO also notes that, on appeal, the petitioner appears to have expanded the responsibilities of its proffered position, stating that the software systems support specialist will also serve in the development, design and monitoring of highly-complex computer software systems, serve as the liaison to the president of the company, be responsible for assisting managers and other employees in the strategic planning phases for market penetration, direct and formulate plans for the development and monitoring of various software design systems that will be used to analyze and monitor the company's market activities, and be directly responsible for making recommendations to the upper-level management of client companies in connection with marketing, and e-commerce software systems designs and specifications.

However, on appeal, a petitioner may not offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may also not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). As a result, these expanded duties will not be considered by the AAO and this proceeding will rely upon the record, as it existed at the time of the director's decision.

Based on that record, the AAO concludes the proffered position is closely aligned to that of computer support specialists and systems administrators for which the *Handbook* states there is no standard educational requirement. As a result, the petitioner has failed to establish that its proffered position qualifies as a specialty occupation under the first criterion – that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To determine whether the petitioner's position meets the second criterion – 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 it can be performed only by an individual with a degree in the specific specialty – the AAO has reviewed the related materials submitted by the petitioner in response to the director's request for evidence and on appeal: a letter from the President of Essence Computer in Flushing, New York stating that a

degree in computer science or its equivalent is a standard requirement for the type of position the petitioner seeks to fill; an expert opinion submitted by ██████████ on the educational requirements for a software systems support specialist; material from the Department of Labor's *Dictionary of Occupational Titles (DOT)*; and a series of Internet job postings for computer systems specialists.

The AAO has considered the letter signed by ██████████ New York and submitted by the petitioner in response to the director's request for evidence. Although ██████████ states his belief that a degree is required for the proffered position and that his own company's system support specialist has a degree in computer science, he provides no information as to whether his company's operations are similar to the petitioner's or if the duties of his system support specialist parallel those of the proffered position. Further, ██████████ does not discuss whether the degree requirement imposed by the petitioner is common to the industry. As a result, his statements regarding the proffered position do not establish a norm that the industry routinely employs and recruits only degreed individuals. *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

While the opinion of ██████████ regarding the degree requirement for the position of software systems support specialist is relevant to these proceedings, there is no independent evidence provided to substantiate his opinion that companies seeking to employ a software systems support specialist require applicants to possess at least a bachelor's degree in the area of computer information systems or a related field. ██████████ states he is qualified to comment on this subject because of the academic positions he holds and has held at Baruch College, City College of the City University of New York, Mercy College, the University of Bridgeport, and the Stern School of Business at New York University. However, the letter provided by Mercy College to establish ██████████ credentials documents only his authority to award academic credit for work experience. As a result, ██████████ statements regarding computer companies' degree requirements cannot serve as proof of an industry hiring norm and will be viewed as opinion only. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in this proceeding. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg.Comm. 1972).

On appeal, the petitioner also submits a description of the position of microcomputer support specialist from the *DOT* as proof that its position of software systems support specialist is professional in nature. The AAO first notes that the issue before it is not whether the proffered position should be considered as professional, but rather if it qualifies as a specialty occupation under the statute and regulations. Next, the AAO does not find 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. It 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.

As for the series of Internet job postings submitted by the petitioner on appeal, the various position descriptions do not constitute evidence that businesses similar to the petitioner's and with parallel positions require the services of individuals with baccalaureate degrees. After reviewing these job announcements, the AAO finds they reflect the employment needs of a variety of organizations with operations unrelated to the petitioner's business and describe positions that do not appear parallel to that described by the petitioner. As

a result, the AAO concludes that neither the job postings, nor the other materials submitted by the petitioner, establish that the degree requirement for the proffered position is common to the petitioner's industry.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In this case, the director in his request for evidence asked the petitioner to provide the in-house position description for the proffered position, including the educational requirements for the position; a copy of the job announcement for the position, and when and where it was posted and/or published. On appeal, the petitioner also submits copies of the degrees of two of its employees, another software systems support specialist and a computer graphic designer.

The job announcement and the in-house position description for the proffered position do not, however, establish that the petitioner normally requires a degree or its equivalent for the position. Instead, they clearly state, as noted by the director in the denial, that the position may also be filled by an applicant with six years of related experience and, therefore, undermine the petitioner's assertion that a degree is a requirement for the position.

Further, the diplomas submitted by the petitioner do not sufficiently document its practice of hiring individuals with baccalaureate degrees. The degree of the computer graphic designer is that of a bachelor of fine arts from Pusan National University in Korea. In the absence of an equivalency determination from an accredited credentials evaluation organization, it cannot be accepted by the AAO as the equivalent of a U.S. bachelor's degree. Further, it is a bachelor's degree that is unrelated to duties of the proffered position as described by the petitioner. The diploma submitted for the other software systems support specialist documents only that he has an associate's degree in applied science from a technical institute, not a baccalaureate degree from an accredited U.S. university or college. As a result, neither diploma constitutes proof that the petitioner normally requires a baccalaureate degree or its equivalent for the proffered position.

The fourth criterion requires that the petitioner establish that the nature of the proffered 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 the specialty. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO has reviewed the duties of the proffered position as described by the petitioner in its September 27, 2002 letter of support, its response to the director's request for evidence and the expert opinion submitted by Dr. Jonatan Jelen. As previously discussed, the additional job responsibilities offered by the petitioner on appeal have not been considered.

The proffered position has already been determined to be comparable to that of computer support specialist and systems administrator and, per the *Handbook*, does not require a baccalaureate or higher degree as a

minimum requirement for entry into the position. The petitioner seeks to overcome this determination by asserting that the significant specialization and complexity of its position are normally associated with a bachelor's or higher degree, again citing the expert opinion of ██████████ as its support.

The AAO does not, however, find the petitioner's evidence to be persuasive. The duties described by the petitioner do not lead the AAO to conclude that they are more specialized or complex than those associated with the occupation of computer support specialist and systems administrator described in the *Handbook*. Further, as already discussed under the second criterion, ██████████ opinion regarding the degree requirement for the position of software systems support specialist is unsubstantiated by independent evidence. The AAO again notes that going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in this proceeding. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg.Comm. 1972). As a result, the AAO concludes that the petitioner has failed to meet the requirements of the fourth and final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that CIS' denial of its petition is arbitrary, capricious and an abuse of discretion. Citing the unpublished decision in *Safer, Inc. v. INS*, CA 3-87-2761-R (N.D.Tex. Feb. 17, 1989) and the findings in *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Calif. 1989) and *Wilson v. Smith*, 587 F. Supp. 470 (D.D.C. 1984), the petitioner states that the director based his decision on irrelevant factors and failed to consider the actual responsibilities of the proffered position, basing his denial on the petitioner's size and the fact that the petitioner had never hired a professional software support specialist before.

The AAO does not find the petitioner's assertions to be persuasive. CIS' finding that the proffered position does not qualify as a specialty occupation is not based on the petitioner's size or the fact that the petitioner has not previously hired a professional software support specialist. Instead, as already discussed, it results from the petitioner's failure to establish that its position qualifies as a specialty occupation under any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has cited the unpublished decision in *Safer, Inc. v. INS* to question whether CIS may require a petitioner to establish that a degree requirement for its position is common to the industry. The AAO notes that this alternative requirement is embedded in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and confirmed by the findings of *Shanti, Inc., v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The petitioner also references the findings in *Young China Daily v. Chappell* and *Wilson v. Smith* to support its contention that CIS relied on irrelevant factors in reaching its decision in the instant case. However, these cases do not support the petitioner as they involve decisions reached on issues distinct from those now before the AAO. In *Young China Daily v. Chappell*, the court concluded that the former Immigration and Naturalization Service (INS) had failed to consider the specific responsibilities of a graphic designer position and, therefore, erred in determining that the position did not require a professional. The court in *Wilson v. Smith* considered the denial of a petition for a childcare worker based on the petitioner's failure to establish the temporary nature of the employment.

The AAO now turns to the issue of whether the beneficiary whom the petitioner seeks to employ is qualified to perform the duties of the specialty occupation.

In determining whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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.

No evidence has been submitted to establish that the beneficiary has a U.S. baccalaureate degree from an accredited U.S. college or university in the specialty, nor is the beneficiary required to have a license to perform the duties of the proffered position. Therefore, the AAO will focus on the evidence submitted by the petitioner that responds to the second and fourth criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C).

At the time of filing, the petitioner submitted copies of a translated certificate from the Yonsei University in Seoul, Korea, identifying the beneficiary as holding a Bachelor of Science in sports and leisure studies, and a transcript detailing those courses taken and credits earned by the beneficiary in satisfying the University's degree requirements. The record includes an evaluation of this material by World Education Services, Inc., which determined the beneficiary to have the equivalent of a U.S. bachelor's degree in sports sciences from a regionally accredited institution. However, the beneficiary's degree, despite being equivalent to a U.S. bachelor's degree, is not equivalent to a degree required by the proffered position. Therefore, it does not satisfy the requirements of the second criterion -- a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation.

The AAO now turns to the fourth criterion -- whether, absent a degree in the specialty, the beneficiary has the education, specialized training, and/or progressively responsible experience that is equivalent to the

completion of a U.S. baccalaureate or higher degree in the specialty occupation, and has had his expertise in the specialty recognized through progressively responsible positions directly related to the specialty.

When a beneficiary is determined to lack the specific degree required by a specialty occupation, the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D) to determine whether the individual may still qualify to perform the proffered position. A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant visa based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Both in its response to the director's request for evidence and on appeal, the petitioner has asserted that the beneficiary's academic background and work experience qualify him for employment in a specialty occupation. The AAO, therefore, first considers whether the petitioner can establish that it meets the first criterion.

In response to the director's request for evidence, the petitioner submitted an equivalency evaluation of the beneficiary's education and work experience from [REDACTED] who is associated with Long Island University, Pace University and Polytechnic University, New York. [REDACTED] valuation, submitted under his consultancy with International Credentials Evaluation and Translation Services (ICETS), a New York-based firm that specializes in providing academic equivalencies for educational and employment backgrounds, found the beneficiary's combined educational background and specialized work experience to equate to the completion of a U.S. bachelor of science degree in computer science. The director, however,

disagreed with [REDACTED] evaluation, concluding that the documentation provided by the petitioner regarding the beneficiary's previous employment failed to support that evaluation. He, therefore, found that the petitioner had failed to establish that the beneficiary's previous work experience consisted of duties performed at the baccalaureate level.

The AAO has also reviewed the ICETS evaluation authored by Dr. Edelson, but finds it does not satisfy the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Although, as Dr. Edelson is evaluating for ICETS, the AAO will accept his determination that the beneficiary's educational background is the equivalent of a U.S. baccalaureate degree, his evaluation of the beneficiary's work experience in the field of computer science will be discounted. Per 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), the AAO recognizes a foreign credential evaluation service's opinion only to the extent that it evaluates education. Further, [REDACTED] authority to grant college-level credit for experience is not supported by independent evidence. An evaluator's assertion of such authority does not constitute evidence. Instead, confirmation of the evaluator's authority to award academic credit must be provided by a dean, provost, or other appropriate authority at a college or university that has a program that grants college-level credit based on foreign educational credentials, training and/or employment experience.

On appeal, the petitioner has submitted another expert opinion from Dr. Jonatan Jelen who has also determined that the beneficiary's educational background and work experience, together, qualify him under the fourth criterion. Although counsel has provided documentation from Mercy College to support [REDACTED] authority to make this evaluation, that documentation does not come from the college's Division of Mathematics and Computer Information Science, but from its Division of Business and Accounting. As Mercy College does have a computer sciences department and faculty, the AAO finds an evaluation provided by an assistant professor of business, particularly in the absence of supporting documentation from the computer sciences division, to be unpersuasive in establishing that the beneficiary has the equivalent of a bachelor's degree in computer information systems. Where an academic equivalency evaluation is in any way questionable, the AAO may discount it or give it less weight. *See Matter of Sea, Inc.* 19 I&N Dec. 817 (Comm 1988).

Although the beneficiary worked as technical systems manager for a computer company for more than six years, the AAO notes that the evidence of the job duties does not indicate to what extent the job required the theoretical and practical application of specialized knowledge. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). The record before the AAO does not contain the level of detail necessary to determine to what extent the beneficiary's duties, as described in the letter from his previous employer and in his resume, required the theoretical and practical application of specialized knowledge in the specialty, nor whether the beneficiary was given progressively responsible experience while he was employed. The record does not contain enough information to determine whether the beneficiary's previous employment, combined with his academic background, qualifies him under the fourth criterion.

As the record contains no other documentation that responds to the evidentiary requirements of the first four criteria, the AAO next turns to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – whether the equivalent of a degree in the specialty occupation has been acquired through a combination of education, specialized training and/or work

experience in areas related to the specialty and if the beneficiary has achieved recognition of his expertise in the specialty occupation as a result of such training and experience.

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary's employment history does not, however, qualify him to work in a specialty occupation per the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). He has been previously employed for a total of six years which, under the most advantageous interpretation, would amount to the equivalent of two years of college-level training rather than the four required. Further, even if the beneficiary had a significantly longer employment history, the record before the AAO does not provide the detail needed to determine whether his work experience included the theoretical and practical application of specialized knowledge required by a specialty occupation; was gained while working with peers, supervisors or subordinates who have degrees or the equivalent in the specialty; or resulted in any recognition of his expertise.

Therefore, for reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A) and that the beneficiary is qualified to perform the duties of a specialty occupation per 8 C.F.R. § 214.2(h)(4)(iii)(C). Accordingly, the AAO shall not disturb the director's denial of the petition.

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.