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U.S. Citizenship
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FILE: [REDACTED] LIN 04 002 50187 Office: NEBRASKA SERVICE CENTER Date: **MAR 27 2006**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

fd *Robert P. Wiemann*
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director 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 provider of hospitality services that seeks to continue its employment of the beneficiary as an operations director. The petitioner, therefore, endeavors to extend the beneficiary's classification 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 and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

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 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:

[A]n 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 criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

In its September 10, 2003 letter of support, the petitioner set forth the duties of the proposed position as follows:

As an Operations Director with our team of managerial professionals currently working on fine tuning and improving a variety of operations and managerial procedures, [the beneficiary] will utilize his training and industry expertise as he performs a broad range business analysis, financial assessment[,] and management duties. [The beneficiary] will work with our management team to ensure effective and efficient distribution of resources.

This will entail management of our business system’s capability, which reflects the technical sophistication consistent with the needs and budgetary requirements of our organization. The Beneficiary will conduct his responsibilities through a process of reviewing and analyzing reports, records, and directives in order to confer with management to obtain business processing requirements.

After analyzing the company’s workload requirements and data processing requirements, the Beneficiary will recommend insights that contribute to the overall strategic management and facilitation of company objectives. This will encompass generating fundamental reports, creat[ing] high-level test data[,] and execut[ing] test plans. Drawing on his high level of business knowledge, he will develop a thorough knowledge of the company’s business operations, including knowledge of resource allocation and usage, as he directs the management of the operation.

Throughout this process, the Beneficiary will interact with management, responding to questions, comments and criticisms, and modifying business objectives to address concerns raised. The Beneficiary will confer with [the] President and Chief Executive Officer involved with proposed projects to ensure cooperation, review project feasibility studies, establish work standards, and prepare progress reports to inform management of status and deviation from goals.

The petitioner also offered a breakdown of the percentage of time to be devoted to each of the tasks.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation under each of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the

minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

A review of the duties of the proposed position finds them to be closely aligned to the responsibilities of top executives, specifically those of general and operations managers, as those positions are described in the *Handbook*. The 2006-2007 edition of the *Handbook* states the following:

All organizations have specific goals and objectives that they strive to meet. Top executives devise strategies and formulate policies to ensure that these objectives are met. Although they have a wide range of titles—such as chief executive officer, chief operating officer, board chair, president, vice president, school superintendent, county administrator, or tax commissioner—all formulate policies and direct the operations of businesses and corporations, public sector organizations, nonprofit institutions, and other organizations. . . .

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

An advisory submitted by Randall Denha, Esq. states that the duties of the proposed position are similar to those of an operations manager. The AAO agrees.

In that the duties of the proposed position appear closely aligned to those of general or operations managers, the AAO turns to the *Handbook's* discussion of the educational qualifications necessary for entry into the field. The *Handbook* reports the following educational requirements for those seeking employment as a general or operations manager:

The formal education of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts. . . .

Many top executive positions are filled from within the organization by promoting experienced, lower-level managers when an opening occurs. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

As the *Handbook* finds that top executive positions generally impose no specific degree requirement on individuals seeking employment, the petitioner cannot establish that its proposed position, which is closely aligned to that of a general or operations manager, is one that normally requires the beneficiary to hold a baccalaureate or higher degree, or its equivalent. Accordingly, it cannot establish its proposed position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

On appeal, counsel interprets the opening sentences in the *Handbook's* discussion that many top executives have a bachelor's or higher degree in business administration or the liberal arts as evidence that top executives are required to have the minimum of a baccalaureate or higher degree. However, the statement that many top executives have college degrees is not synonymous with the "normally required" standard imposed by this criterion. While the *Handbook* indicates that top management positions may be filled by individuals with a broad range of degrees, its subsequent discussion of the training and education necessary for such employment clearly states that companies also hire executives based on lower-level experience within their own organizations or management experience with another business.

However, even if the *Handbook* had indicated that degrees in business administration and the liberal arts were normally required for employment as a top executive, the petitioner could not use them to establish its proposed position as a specialty occupation under the first criterion. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, suffices for a job, 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. As noted previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the job postings submitted by counsel. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in positions that are parallel to the proffered position and found in organizations similar to the petitioner.

There is no evidence in the record to establish that any of the job postings are from companies similar in size and scope of operations to the petitioner, a hospitality services company with 25 employees. Aramark provides managed services in food, facility and other support services, and uniform and career apparel. With 200,000 employees in 18 countries, it serves over 90 million people per year. Peddler's Village is a hospitality destination with 70 shops and six restaurants. No information is provided regarding the company listed as "LI," and the only information provided about the unnamed company advertising its vacancy through BrilliantPeople.com is that it is a food manufacturer. The only information provided about the unnamed company advertising its vacancy through Monster.com is that it is a national event and show exhibition company.

Moreover, these postings do not verify that there is an industry-wide requirement for a degree in a specialty. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can qualify a worker to perform a job, the proposed position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*. Although all of the job postings state that a bachelor's degree is required, none of them require that the degree be in any specific field. As noted previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position.

The unnamed food manufacturer advertising its vacancy through BrilliantPeople.com is the only company that mentions this issue at all. This company requires a bachelor's degree in food science, engineering, or a related field, which leads the AAO to believe that this position is not "parallel" to the proposed position as contemplated by the regulatory criterion.

As such, the petitioner has not demonstrated that its degree requirement exists in parallel positions among similar organizations.

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. The evidence indicates that the position proposed in the petition is very similar to the operations director occupation, which, as described in the *Handbook*, does not normally require a degree in a specific field.

Accordingly, the petitioner has not established its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. 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 the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

On appeal, counsel submits a copy of a bachelor's degree in business administration, and contends that the individual to whom this degree was granted held this position before the beneficiary. However, counsel has submitted no documentary evidence to support his claim that this individual was in fact employed by the petitioner, such as payroll records or other evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply 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)).

However, even if the AAO were to accept counsel's contention that the named individual in fact worked for the petitioner as an operations director, this criterion would still not be satisfied. As noted earlier, when a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can qualify a worker to perform a job, the proposed position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed 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 occupation.

Counsel and the petitioner limit the information about the proposed position to generically described duties like business analysis, financial assessment, management duties, generation of reports, and

efficient resource distribution, as well as other duties. Consequently, to the limited extent they are described in the record, the duties of the proposed position do not support a conclusion that their performance would usually be associated with at least a bachelor's degree in a specific specialty. Rather, the evidence of record does not distinguish the proposed duties from those of the general occupational category of operations manager, for which the *Handbook* indicates no usual association with any particular degree. Therefore, the proposed position does not qualify as a specialty occupation under the fourth criterion.

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. Accordingly, the AAO will not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO has determined that the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation. For this additional reason, the petition may not be approved.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an 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.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The record does not indicate that the beneficiary has earned a degree from a United States institution of higher education, so he does not qualify under the first criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. The beneficiary has no foreign degree to evaluate, so he cannot qualify under this criterion.

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration, or certification to practice the specialty occupation, so he does not qualify under the third criterion, either.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is the fourth criterion under which the petitioner must classify the beneficiary's combination of education and work experience. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is determined by one or more of the following:

- (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.

The beneficiary cannot satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The AAO notes that the petitioner submitted an evaluation from [REDACTED] dated November 14, 2000, at the time the petition was initially filed. The [REDACTED] evaluation states that the beneficiary's work experience is equivalent to a bachelor's degree in business administration and management from a regionally accredited institution of higher education in the United States.

However, this evaluation does not meet the regulatory criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as there has been no showing that the [REDACTED] evaluator, [REDACTED] Ed.D., has the authority to grant college-level credit for training and/or experience in business administration at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

On appeal, counsel submits a letter, dated February 2, 2001, from Dr. [REDACTED] that states, in part, the following:

As President of Globe, a major U.S. international credential evaluation service, and faculty member at New York University, Dr. ██████ recommendations are accepted by a number of universities such as Long Island University, New York University, and Pace University in granting college-level credit.

As a preliminary matter, the AAO notes that since Dr. Fletcher wrote this letter himself, its evidentiary weight is diminished. However, even if the AAO were to accord full evidentiary weight to this letter 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) would still not be satisfied. There has been no showing that Long Island University, New York University, and Pace University have programs for granting college credit based on an individual's training and/or work experience. Moreover, Dr. ██████ himself does not even state that he has the authority to *grant* credit at Long Island University, New York University, or Pace University based on training and/or work experience. Rather, he states (without supporting evidence) that his "recommendations" are "accepted." 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.

In his appellate brief, counsel states the following:

With respect to your concerns regarding the evaluator's ability to grant college level credit, please be advised that the evaluation was completed by a [sic] '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 experience,' pursuant to INS criteria and the federal regulations listed at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and (3). For your reference, we have enclosed the Evaluator's credentials for your review. Dr. ██████ holds an Ed.D. and is an Adjunct Associate Professor at New York University. Dr. ██████ has successfully completed more than seventeen thousand evaluations for INS pursuant to INS requirements (emphasis in original).

However, counsel offers no evidence that Dr. ██████ has the authority to grant credit at New York University based on training and/or work experience. Nor does he offer any evidence that New York University has a program for granting college credit based on an individual's training and/or work experience. Again, simply 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. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Therefore, the beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires the submission of 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).

Nor does the record offer the evidence required to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the petitioner cannot qualify the beneficiary under this criterion because he does not hold a foreign degree which can be evaluated by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires evidence of the beneficiary's certification or registration by 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.

The AAO next turns to the fifth criterion. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien's expertise in the specialty has been recognized, as evidenced by at least one of the following types of documentation:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country;
or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

As evaluation submitted by counsel and the petitioner was deficient, they must therefore establish that the beneficiary is qualified to perform the duties of the proposed position under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As previously noted, the formula utilized by CIS is three years of specialized training and/or work experience for each year of college-level training that the alien lacks. A baccalaureate degree from a United States institution of higher education would require at least four years

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

of study. Accordingly, the record must demonstrate that the beneficiary has at least twelve years of qualifying work experience in order to establish an equivalency in the specialty.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. A letter from the [REDACTED] and Restaurant indicates that the beneficiary worked there as an operations manager from 1977 until 1980.

However, there is no evidence in the record that would allow the AAO to determine whether this work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; whether it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in the specialty; and whether the beneficiary achieved recognition of expertise in the specialty evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The record also contains a letter from the [REDACTED] which states that the beneficiary worked there as an "executive director/administrative" from March 1980 until February 1984. However, there is no evidence in the record that would allow the AAO to determine whether this work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; whether it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in the specialty; and whether the beneficiary achieved recognition of expertise in the specialty evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The record also contains an affidavit from the beneficiary which states that he owned an import/export trading firm in Iraq. He states that he held the positions of chief executive officer, chief financial officer, and operations manager from August 1986 through January 1995. However, there is no evidence in the record that would allow the AAO to determine whether this work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; whether it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in the specialty; and whether the beneficiary achieved recognition of expertise in the specialty evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As such, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Therefore, the beneficiary does not qualify to perform services in a specialty occupation. For this additional reason, the petition may not be approved.

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.