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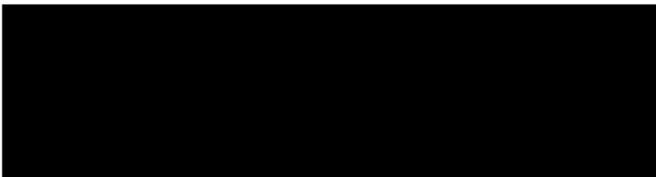


FILE: EAC 05 145 53973 Office: VERMONT SERVICE CENTER Date: AUG 30 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, 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 New York real estate broker established in 1996, with five employees¹, and \$494,397.00 stated gross income. It seeks to hire the beneficiary as a part-time market specialist. The petitioner, therefore, 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 director denied the petition because the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation. On appeal, the petitioner contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

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

The first issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a 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 In response to the RFE the petitioner described the duties for three employees.

- (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 a part-time market specialist. Evidence of the beneficiary's duties includes: the petitioner's April 6, 2005 letter; prior counsel's November 28, 2005 response to the RFE; and counsel's March 17, 2006 appeal brief. In response to the director's request for evidence, the petitioner offered a similar list of duties as stated at the time of filing with the inclusion of the percentage of time for each duty.²

In the response to the RFE, the petitioner stated that the beneficiary would be required to:

- Apply methodology from sociology and cultural studies, to develop customer survey techniques, develop surveys, questionnaires and other information gathering methods in order to obtain information concerning real estate markets and potential immigrants including age, gender, income, occupation, education, family size, religion, ethnic group, social class and lifestyle and the relationship of these criteria to the specific services and customer service provided by Petitioner. [15% of time]
- Based on information developed through above research techniques for evaluating customer satisfaction, make recommendations concerning methods for enhancing customer communication and marketing strategies. [15% of time]
- Use standard sociological methodology [in order] to segment consumers of Petitioner's various services into specific groups according to sociological profiles. [10% of time]
- Conduct research into the effect of culture, lifestyles, values and related sociological and psychological factors on customer demand on real estate. [10% of time]
- Analyze and evaluat[e] the data to forecast financial and economic situation and market tendency on the real estate market. [10% of time]

² The AAO notes that the total percentage of time stated is equal to 110%.

- Discuss with partner to carry out decisions on the sales promotion and advertisement of company services. [10% of time]
- Gather data on competitors and analyze prices, sales, and methods of marketing and distribution. [10% of time]
- Compile raw data, evaluate it and make detailed recommendations respecting promotion, design, and pricing of Petitioner's services. [10% of time]
- Conduct organizational studies and evaluations in order to conduct sales promotions for Petitioner. [10% of time]

On appeal, the petitioner submits a letter indicating its reasons for targeting the Japanese real estate market in New York, and additionally states that the beneficiary will oversee the advertising budget of \$31,000, and will design and discover the most cost efficient way to tap into the buying and renting power of the Japanese who live in or wish to invest in property in New York City.

The AAO notes that although the Form I-129 lists the proffered job title as "market specialist," counsel and prior counsel also refer to the position as a market research analyst position. 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.

The position offers a combination of duties of a marketing and advertising manager and market research analyst as described in the *Handbook*. While either of these positions may sometimes be a specialty occupation requiring a degree in a related field, the petitioner's description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention that a degree in marketing or a related field is necessary to conduct the duties.

At the time of filing, the petitioner offered a generic description of the beneficiary's market specialist duties. The director found this description insufficient to establish the position as a specialty occupation and asked for further information in a notice of request for additional information dated September 22, 2005. As noted above, in response the petitioner offered a similar list of duties as stated at the time of filing.

In reaching its own conclusions regarding the nature of the proffered position, the AAO has reviewed the discussion of market research analysts and advertising and marketing managers. It has taken particular note of the following sections of the discussion of these occupations in the *Handbook*:

[M]arket research analysts devise methods and procedures for obtaining the data they need. They often design telephone, mail, or Internet surveys to assess consumer preferences. Some surveys are conducted as personal interviews by going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers, under the market research analyst's direction, usually conduct the surveys.

After compiling the data, market research analysts evaluate them and make recommendations to their client or employer based upon their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. Market research analysts might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

* * *

Marketing managers develop the firm's marketing strategy in detail. 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—for example, business firms, wholesalers, retailers, government, or the general public. 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 they oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users.

The *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many market and survey research jobs. It does not however, indicate that the degrees held by candidates must be in a field directly related to market research as required for classification as a specialty occupation. With respect to advertising and marketing managers, the *Handbook* indicates that a wide range of educational backgrounds is suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. Accordingly, the listed duties do not establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Moreover, the petitioner's description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention that it is offering the position of a market research analyst. 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. In establishing a position as a specialty occupation, the petitioner must describe the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business interests.

The AAO declines to accept a broad overview of an occupation as definitive of a particular position's daily duties. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary

evidence. To allow otherwise would require acceptance of any petitioner's generic description to establish that its proffered position is a specialty occupation. CIS, however, must rely on a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary in relation to its business and what the proffered position actually requires, in order to analyze and determine whether the duties of the position require a baccalaureate degree in a specialty. In this matter the petitioner has not provided such a description or documentation. While the petitioner states that it will use standard methodology from sociology and cultural studies to obtain information about Japanese consumers that will be useful in its marketing efforts, the petitioner does not give any details about the use of such methodology or show that its application will require the knowledge obtained by a degree in a specific field. This research could be of the type performed routinely by advertising and marketing managers in the identification of potential markets and the monitoring of trends that indicate the need for new products and services. While it may involve more complex analysis requiring a degree in marketing or a related field, the description of duties is insufficient to allow the AAO to make that determination. It is not possible to identify the actual daily duties required of the position and, therefore, whether the position meets the statutory definition of a specialty occupation, that is employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation.

On appeal, the AAO notes that counsel references the Specific Vocational Preparation (SVP) rating of 7.0 given to the occupation of market research analyst by the *Dictionary of Occupational Titles (DOT)*. However, the AAO does not consider *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. *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. Furthermore, the SVP rating of 7.0 assigned by *DOT* to the occupation of market research analyst does not indicate that a bachelor's degree in a specific specialty is required. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. The SVP rating 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.

Counsel and prior counsel assert that the AAO has already determined that the proffered position is a specialty occupation since the AAO has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position offered in the prior cases was similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In 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). Although the AAO may attempt to hypothesize as to whether a prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. CIS is not required to approve 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). Neither CIS nor any other 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).

Nor does counsel's submission of the court's holding in *Unical Aviation, Inc. v. INS*, 248 F. Supp. 2d 931 (C.D. Cal. 2002) establish the proposed position as a specialty occupation. First, the AAO notes that the court in *Unical* determined that the position proposed in that case was similar to that of a marketing research analyst, as such positions are described in the *Handbook*. Such is not the case here. The proposed position is similar to the positions of market research analyst and advertising and marketing managers as set forth in the *Handbook*. The *Handbook* does not support the petitioner's contention that the position requires a degree in a specific field. Moreover, the AAO notes that the two cases are not factually similar, as the court in *Unical* specifically referenced the company's hiring of only persons with degrees in its marketing program.³

The petitioner indicates that a CIS representative stated that a market research analyst is a specialty occupation. Opinions expressed by CIS representatives do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. The law requires a petitioner to establish that the proffered position is a specialty occupation under the statute and under one of the four alternate regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For all of these reasons, the proposed position does not qualify for classification as a specialty occupation under the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the 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.

In a letter dated April 6, 2005, the petitioner referenced the educational requirements for market research analysts. The petitioner quotes from the California Employment Development Department and Monster.com websites and states that "a copy of these materials is also enclosed for your reference." The record does not include copies of these materials. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement is common in parallel positions among similar organizations. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

Counsel's citation of *Young China Daily v. Chappell*, 742 F. Supp. (N.D. Calif. 1989) does not satisfy the first prong of the second criterion in this matter. While the size of a company does not, in and of itself, determine its need for a given position, its size, scope, and scale of operations do have a direct and substantial bearing on the question of whether it is "similar" to another organization. Moreover, the AAO notes that the

³ The petitioner in this case cannot make such a determination, as it has no hiring history to demonstrate. The AAO explores this issue further in its discussion of the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), *infra*.

court in *Young China Daily* made only the narrow ruling that the duties of a graphic designer at a small newspaper do not necessarily differ from those at a major newspaper. This does not lead to the general conclusion that the skills required to be market research analyst or an advertising or marketing manager in a small company will always require a degree in a specific field.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The *Handbook* reveals that the duties of the proposed position are similar to those of an advertising and marketing manager and a market research analyst as outlined in the *Handbook*, which do not require a specific degree as a minimum entry requirement. In his appeal brief, counsel states that the position is so complex or unique that it can only be performed by an individual with a bachelor's degree. However, the record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations similar to the petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Therefore, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 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 position's employment history, 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. While it is not necessary that the petitioner currently employ or have hired another person in the proffered position, the record contains no evidence that the petitioner has hired a market research analyst in the past and therefore, eligibility under this criterion cannot be established.

The AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Moreover, the critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. 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. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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 the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Again, there is no information in the record to support a finding that the proposed position is more specialized or complex than the general range of advertising and marketing manager and market research analyst positions for which the *Handbook* indicates no requirement for the highly specialized knowledge associated with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

On appeal, counsel states that "the use of Japanese to perform these duties is integral to the occupation as needed by the employer, and further complicates trans-cultural, trans-linguistic transactions." Although the beneficiary's fluency in the Japanese language may be beneficial to the petitioner, it is not a requirement for the proffered position. Furthermore, although universities provide bachelor's degrees in modern languages, the ability to speak a language and to understand a culture has not been established in the record to be so specialized or complex that the knowledge required is usually associated with the attainment of a baccalaureate or higher degree.

The director questioned the complexity of the duties given that the position will be performed on a part-time basis. The ability to perform duties on a part-time basis does not determine whether or not the duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO withdraws the director's comments on this issue. The decision may not be approved, however, as the petitioner failed to otherwise establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

Beyond the decision of the director, the beneficiary does not appear to be qualified to perform the duties of a specialty occupation. 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 beneficiary did not earn a degree from a United States institution of higher education, so she does not qualify under the first criterion of this subsection.

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), 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 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; therefore, she does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

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 seeks to classify the beneficiary's eligibility to perform the duties of a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), to succeed in equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the beneficiary would have to present 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.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the AAO does not accept the conclusion, reached by [REDACTED] that the beneficiary has attained the equivalent of a Bachelor's degree in business administration with a major in marketing. The evaluator based her evaluation of the beneficiary's work experience on a copy of the beneficiary's resume and on a letter from a previous employer, [REDACTED] Inc. In a letter dated March 10, 2005, [REDACTED] states that she is qualified to assign college credit for professional work experience at American InterContinental University. However, the record does not contain a letter from the dean or provost of the university establishing that [REDACTED] has such authority or that the university has a program for granting credit based on training and/or experience. Thus the petitioner has not established that the beneficiary is qualified to perform the services of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The petitioner has also not established the validity of the evaluation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The evaluation is based upon the beneficiary's work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

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 that the beneficiary submit 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).

As section 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) recognizes a foreign credentials evaluation service's opinion only to the extent that is an "evaluation of education," not work experience, the AAO does not accept Dr. [REDACTED] conclusion that the beneficiary possesses the equivalent of a U.S. bachelor's degree in business administration with a major in marketing.

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 that the beneficiary submit 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.

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. The regulation states that it must be clearly demonstrated (1) that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; (2) 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 (3) that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation⁴;
- (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.

For the following reasons, the petitioner has failed to meet the beneficiary qualification requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The former employer's letter describes the beneficiary's experience in terms that are too general to clearly demonstrate that the beneficiary's training and/or work experience included the theoretical and practical application of a body of specialized knowledge. Further, the letter does not clearly demonstrate that the beneficiary's experience was gained "while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation," as the regulation requires. Finally, the record of proceeding lacks documentation of the type specified at subsections (i) through (v) to establish that the alien has achieved the appropriate level of recognition in a pertinent specialty occupation.

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). The AAO withdraws the director's statement that the beneficiary has work experience equivalent to a Bachelor of Science degree in business administration.

⁴ *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).

Thus, the beneficiary does not qualify to perform the duties of a specialty occupation. For this additional reason, the petition may not be approved.

The petitioner has not established that the proposed position qualifies for classification as a specialty occupation, nor has the petitioner established that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will 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.