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U.S. Citizenship
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Services

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FILE: WAC 04 171 52290 Office: CALIFORNIA SERVICE CENTER Date: OCT 29 2007

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision of the AAO will be affirmed. The petition will be denied.

The petitioner is a real estate and mortgage broker business that seeks to extend its authorization to employ the beneficiary as a part-time human resources 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 proffered position is not a specialty occupation.

On motion, counsel asserts that the proffered position is a specialty occupation because it meets the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel submits additional supporting documentation including the following: evidence of the petitioner's name change; the petitioner's most recent California Form DE6 Quarterly Payroll Report; the petitioner's 2004 federal income tax return and evidence of the petitioner's application for an extension to file its 2005 tax return; the petitioner's organizational chart and related business documents; a June 12, 2006 opinion letter authored by [REDACTED] Professor of Industrial Relations, University of Minnesota [REDACTED] opinion); and, a letter from the petitioner's president.

The record of proceeding before the AAO contains: (1) the Form I-129 filed May 28, 2004 and supporting documentation; (2) the director's August 26, 2004 request for evidence (RFE); (3) former counsel's November 1, 2004 response to the director's request; (4) the director's December 3, 2004 denial decision; (5) the Form I-290B, received December 30, 2004, with former counsel's brief and supporting documentation; (6) the AAO's May 16, 2006 decision to dismiss the appeal; and (7) new counsel's timely filed motion to reopen. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the 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 Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) consistently 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 seeks the beneficiary's services as a part-time human resources specialist. Evidence of the beneficiary's duties includes: the petitioner's May 3, 2004 letter in support of the petition and the petitioner's former counsel's November 1, 2004 response to the director's RFE. As stated by the petitioner, the proposed duties are as follows:

Plan and carry out the company policy relating to personnel recruitment, interview, and selection of employees to fill vacant positions. Conduct new employee orientation to foster positive attitude toward company goals. Conduct psychological testing, interpretations, interviews, and evaluations related to new and existing employees. Maintain and update employee personnel records. Keep records of insurance coverage, pension plans, and personnel transactions.

Analyze statistical data and reports to identify and determine causes of personnel problems and develop recommendations to improve personnel policies and practices. Analyze training needs to design employee development, language training, and health and safety programs. Develop,

administer, and evaluate applicant tests. Plan, organize, and direct a wide range of training activities.

Gather information of worker attitudes toward work environment and supervision; participate in resolving employee relation problems. Gather information related to worker morale, motivation, and efficiency, and provide related training and seminars.

Plan and conduct the petitioner's public relations program.

In response to the director's RFE, the petitioner's former counsel indicated that the proposed duties were specialized and complex, such as speaking and writing effectively and conducting market surveys to become knowledgeable about the different salary rates offered in comparable industries. He further provided the following breakdown of the time to be spent on the proposed duties:

- 35% - Training and development of current employees;
- 20% - Recruitment of new employees;
- 25% - Labor relations management; and
- 20% - Employee compensation and benefits.

Also in response to the director's RFE, the petitioner provided copies of four Internet job announcements for positions including: (1) a human resource manager for a real estate management and development firm that indicated that the successful candidate would have five years of experience in human resource administration, that a secondary education degree was required, and that preference would be given to individuals with a degree in human resources and a membership affiliation with SHRM; (2) a recruiter for a commercial real estate brokerage firm that preferred skills and experience that included a bachelor's degree in business administration or human resources and 2-4 years of staffing experience; (3) a human resource generalist for a company involved in mortgage investments that indicated a bachelor's degree is preferred but required a minimum of two years of experience in the field; and, (4) a director of human resources for a commercial real estate investment firm that required a minimum of 5 years of human resource experience and required a college degree in an unspecified discipline.

The director found that the proposed part-time human resources specialist duties do not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner provided four additional copies of Internet job announcements including: (1) an HR manager for a real estate services and money management company with approximately 17,300 employees worldwide that required a bachelor's degree with a major concentration in an HR related field and a minimum of 5-8 years of experience in an HR generalist role; (2) a human resources specialist/office manager for a real estate investment management firm that lists a business and/or human resources degree in the qualifications

field but does not specify if the degree is preferred or required; (3) a human resources intern for an independent real estate service provider that lists a bachelor's degree in HR or related field and indicates the company will consider an individual in the process of obtaining an HR degree; and, (4) a human resources coordinator for [REDACTED] that lists a bachelor's degree or equivalent experience in a service-oriented environment as the qualifications for the position and indicates the preferred areas of study as human resources, business administration, psychology, communications, English or literature.

On motion, counsel for the petitioner submits the additional information listed above, including the petitioner's president's June 9, 2006 letter. In the June 9, 2006 letter, the petitioner indicated that it currently employed a workforce of 16 employees and 21 independent contractors; had increased its income as noted in the tax records provided; and had four divisions including [REDACTED] Accounting and Tax Services. The petitioner asserted that the proffered position included specialized and complex duties requiring a bachelor's degree in human resources administration, communications, or psychology and that its increase in gross revenues from 2003 to 2004, from \$1,590,518 to \$2,416,784 demonstrated its need for a degreed human resources manager.

The record on motion also includes the June 12, 2006 Remington opinion. [REDACTED] observes, based on his years of experience in the labor economics/human resources field, that the overriding majority of businesses of varying sizes will utilize the services of a degreed human resources manager. [REDACTED] references the petitioner's two letters dated May 3, 2004 and June 9, 2006 and opines: "that a company both of this nature and of this size could legitimately require the services of a Human Resources Manager to perform many of the duties that were specified previously in the May 3, 2004 letter." [REDACTED] paraphrases the petitioner's description of duties of the proffered position and opines: "that the person whose employment is being sought in order to fill this Human Resources Manager position will require that the applicant hold a Bachelor's Degree in an area such as Human Resources Management, Business Administration, Communications, or a related social sciences field such as Psychology." [REDACTED] indicates his opinion is based on the duties of the position that require extensive writing, research, analytical and supervisory skills, all of which are included in the theoretical course of study leading to a four-year university degree in one of the listed areas mentioned above.

The record also contains the following documentation pertaining to the petitioner:

- Certificate of Amendment of Articles of Incorporation filed with the State of California, dated May 11, 2005, reflecting that the petitioner changed its name from [REDACTED] to [REDACTED]
- Quarterly wage report for the petitioner for the quarter ending on March 31, 2006, reflecting 13 employees for the first and third quarters and 12 employees for the second quarter;
- Application for an extension to file the petitioner's 2005 federal income tax return;

- Petitioner's 2004 federal income tax return reflecting \$2,416,784 in gross receipts or sales, \$84,000 in compensation of officers, and \$269,271 in salaries and wages;
- Petitioner's 2003 federal income tax return reflecting \$1,590,518 in gross receipts or sales, \$82,000 in compensation of officers, and \$162,998 in salaries and wages;
- Licenses for the petitioner to engage in business activities in the States of Nevada and Florida; and
- Evidence of ownership of two office buildings in Lancaster and Panorama City, California.

Although not addressed by counsel on motion, the AAO will provide a more extensive analysis of the first three criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A), as well as a more thorough and complete analysis of the fourth criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A).

When determining whether the employment described qualifies as a specialty occupation, the AAO first turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. One of the factors considered by the AAO when determining this criterion includes whether the *Handbook* reports that the industry requires a degree. The proffered position's duties fall within the occupational title of human resources, training and labor relations managers and specialists discussed in the 2006-2007 edition of the DOL *Handbook*:

Attracting the most qualified employees and matching them to the jobs for which they are best suited is important for the success of any organization In the past, [human resources, training, and labor relations managers and specialists] have been associated with performing the administrative functions of an organization, such as handling employee benefits questions or recruiting, interviewing, and hiring new personnel in accordance with policies and requirements that have been established in conjunction with top management. Today's human resources workers manage these tasks and, increasingly, consult top executives regarding strategic planning. They have moved from behind-the-scenes staff work to leading the company in suggesting and changing policies.

* * *

In a small organization a *human resources generalist* may handle all aspects of human resources work, and thus require an extensive range of knowledge. The responsibilities of human resources generalists can vary widely, depending on their employer's needs.

The *Handbook* also notes: employment interviewers help match employers with qualified jobseekers; a compensation manager establishes and maintains the firm's pay system including conducting surveys to see how their firm's rates compare with others; an employee benefits manager or specialist manages the company's

employee benefits program notably its health insurance and pension plans; and a training specialist plans, organizes, and directs a wide range of training activities.

The educational backgrounds that may qualify an individual for a career in human resources management are diverse. As indicated by the *Handbook*:

The educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably because of the diversity of duties and levels of responsibility. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, human resources administration, or industrial and labor relations. Other employers look for college graduates with a technical or a business background or a well-rounded liberal arts education.

* * *

Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business, and behavioral sciences is useful. Some jobs may require a more technical or specialized background in engineering, science, finance, or law for example. Most prospective human resources specialists should take courses in compensation, recruitment, training and development, and performance appraisal, as well as courses in principles of management, organizational structure, and industrial psychology. Other relevant courses include business administration, public administration, psychology, sociology, political science, economics, and statistics.

While the *Handbook's* discussion notes that many employers seek job candidates for human resources positions who have degrees, it does not state that a degree requirement is normally required for entry into the profession. The *Handbook* further observes that those employers who do require job candidates to hold degrees accept degrees in a variety of fields of study. The *Handbook's* discussion of entry-level human resources employment also appears to indicate that some employers are willing to fill entry-level positions based on candidates' experience. Thus, the *Handbook* does not report that a degree in a specific discipline is required to perform the duties associated with a human resources position. When a job, like one in the human resources field¹ can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of [REDACTED] 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.

¹ The AAO observes that the petitioner labels the position a human resources specialist. In the [REDACTED] opinion, [REDACTED] labels the position a human resources manager. The AAO finds, based on the *Handbook's* report of occupations within the human resources field, that the position most closely resembles that of a human resources generalist. Although the record contains references to the proffered position using slightly different labels, the AAO has reviewed the description of the position as submitted by the petitioner.

Based on the information in the *Handbook*, the AAO disagrees with [REDACTED] conclusion that the proffered position as described by the petitioner is a position that would normally impose a degree requirement in a specific discipline on the successful candidate.² The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The *Handbook*, which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. [REDACTED] opinion is insufficient to overcome the *Handbook's* report that not all human resources positions require an individual with a degree in a specific discipline to perform the duties of such a position.

The AAO notes the *Handbook's* discussion of some employers' preferences but again the *Handbook* does not indicate that a degree in a specific field of study is a normal requirement. Additionally, employer preference is not synonymous with the "normally required" language of the criterion. Further, the *Handbook* suggests that a diverse education will assist an applicant in obtaining a human resources position, an implication that undercuts the petitioner's claim that this is a specialty occupation. Moreover, as will be discussed below, the advertisements for individuals in the field of human resources positions submitted by the petitioner confirm the diversity of backgrounds suitable for positions in the human resources field.

The AAO does not find that the position of human resources specialist to be a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish a proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), a petitioner must prove either 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 observes again that when a job, like that of human resources manager/specialist, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. at 558. To prove that a job requires the

² The AAO observes that [REDACTED] opinion appears to focus solely on the petitioner's proffered position and not a generally described human resources position. However, to be clear the AAO has addressed [REDACTED] opinion as if applicable to any number of generally described human resources positions. Although [REDACTED] observes that an overriding majority of businesses of varying sizes will utilize the services of a degreed human resources manager, [REDACTED] does not state that a degree requirement is a normal requirement for the general position of a human resources position. The AAO does not dispute that a business would be able to utilize the services of a degreed human resources manager, but utilizing the services of a degreed individual is not the same as the duties of a position requiring a degreed employee to perform them.

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.

In this matter, as referenced above, the petitioner did not submit evidence or information to demonstrate that a degree requirement in a specific discipline is the norm within its industry. The eight job advertisements submitted by the petitioner include advertisements for a variety of human resources positions from organizations generally associated with the real estate business. However, none of the advertisements state that a bachelor's degree in a specific discipline is required for the position advertised. A review of the advertisements submitted show: two of the advertising companies list a bachelor's degree in business or in a human resources field, but neither advertisement indicates whether the specific degree is preferred or required; one advertisement indicates that a bachelor's degree in business or human resources is preferred; one advertisement requires the successful incumbent to have a college degree but does not specify a discipline; one advertisement prefers a college degree but does not specify a discipline; one advertisement indicates that a secondary degree is required but does not specify if this is an associate or bachelor degree while also indicating a preference for a human resources degree and membership in a professional organization; one of the advertisements indicates that the company will consider an individual with less than a bachelor's degree; and one of the advertisements indicates that either a bachelor's degree in a variety of disciplines or experience in the human resources field will suffice. The diversity of the requirements and preferences outlined in the advertisements do not establish a "norm" within a particular industry for a human resources position. Moreover the petitioner has not established that any of the advertised positions are parallel to the proffered position in terms of duties and responsibilities. Further, the record does not contain evidence of the similarities of the advertising organizations other than that seven of the eight organizations are associated with the real estate business in some manner. Thus, based on the job advertisements submitted, the record does not demonstrate that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Factors often considered by CIS when determining industry standards for a particular position include: whether the *Handbook* reports that 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. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). The record does not include other evidence from firms, individuals, or professional associations regarding an industry standard. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has not submitted sufficient documentation to establish that the duties of the proffered position involve duties that are complex or unique. The AAO has considered the description of duties submitted by the petitioner, the opinion rendered by [REDACTED], and the *Handbook*, in finding that the proffered position is not distinguishable from the typical duties of a human resources position. The petitioner initially

noted that the incumbent would plan and carry out policy relating to personnel recruitment, interview, and selection of employees, conduct new employee orientation, maintain and update personnel records, and keep personnel records, as well as analyze training needs and plan, organize, and direct training activities. These duties coincide with the information in the *Handbook* regarding the occupation of a human resources generalist, who interviews applicants and is involved with employee benefit and training, an occupation that does not require a bachelor's degree or higher in a specific discipline. The AAO does not find that a human resources generalist must have a bachelor's degree in human resources management or a related field to perform these routine duties.

The petitioner also notes that the individual in the proffered position will conduct psychological testing and "interpretations, interviews, and evaluations" related to employees. This duty is not sufficiently defined to provide an understanding of the actual tasks associated with the duty. It is not clear whether the beneficiary will administer prepared uniform tests, will provide an interpretation of the tests, or will provide an evaluation of the tests. Likewise, the petitioner does not provide information regarding the type of statistical data the individual in the position will analyze or how the individual in the position will gather information of worker attitudes or participate in resolving employee relation problems. Without documentary evidence or a more detailed description of the duties, the tests, the statistical data, and the methods of gathering information, the AAO is unable to conclude that these duties are more complex or unique than the routine duties of an individual employed in a human resources position. 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)). In addition, while the petitioner initially indicated the individual in the position would plan and conduct the petitioner's public relations program, the petitioner provided no further information substantiating the details of this responsibility in response to the director's RFE or on appeal or on motion.

The record is insufficient to distinguish the proffered position from similar but non-degreed employment. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to 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, 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 the instant matter, former counsel for the petitioner asserted that the petitioner's employment of the beneficiary, an individual with a foreign degree in psychology, was evidence to show that the petitioner normally required a bachelor's degree or its equivalent for the position. However, 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. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all

such employees to have baccalaureate degrees or higher degrees. The prior H-1B approval of the beneficiary in the position is insufficient to establish the position as described in the instant petition is a specialty occupation. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). The record in this proceeding does not establish the proffered position as a specialty occupation. Accordingly, the AAO finds that the petitioner has not established the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO turns to the next criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) whether 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.

On motion counsel for the petitioner asserts that AAO did not correctly apply the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel submits [REDACTED] opinion letter to support the assertion that the duties of the proffered position are sufficiently specialized and complex to require the type of knowledge usually associated with the attainment of a baccalaureate degree. Counsel requests the AAO to consider the duties described in the petitioner's May 3, 2004 and June 9, 2006 letters, [REDACTED]'s opinion letter, and the petitioner's financial documentation attesting to the petitioner's significant revenues. Counsel also provides a copy of a federal court decision (*Fred 26 Importers, Inc. v. United States Department of Homeland Security*, CV 05-03477 (May 11, 2006)) that overturned an H-1B human resources manager denial wherein the AAO had not considered expert statements and other evidence when determining the position did not qualify as a specialty occupation pursuant to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner's description of the proposed duties indicated that the individual in the proffered position: would follow company policy in performing tasks associated with personnel recruitment, interview, and selection of employees; would conduct new employee orientation; would maintain and update employee personnel records; would plan, organize, and direct a wide range of training activities; and would keep records of insurance coverage, pension plans, and personnel transactions. These are duties that are similar to the *Handbook's* overview of the diverse activities that make up the position of a human resources generalist who will recruit, train, and maintain personnel records. These described duties do not exceed the typical tasks associated with a human resources manager or generalist, occupations that are not specialty occupations. The individual in the proffered position will be involved in many of the tasks necessary to hire and retain the company's employees.

As part of the responsibility of retaining employees, the individual in the proffered position will identify and determine causes of personnel problems and will make recommendations to improve personnel policies and practices. The AAO has considered the duties of identifying and determining causes of personnel problems and making recommendations to improve personnel policies and practices. These duties also suggest that the individual performing them will be performing tasks associated with the tasks of a human resources manager. The AAO notes that although the petitioner indicates the individual in the proffered position will analyze statistical data to identify and determine the cause of personnel problems, the petitioner does not provide examples of the data that would be used. Thus, it is not possible to conclude that analyzing the data is a duty

that is so specialized or complex that the individual performing the duties would require knowledge usually associated with a baccalaureate or higher degree. Likewise, the petitioner indicates that the individual in the proffered position will gather information of worker attitudes and morale, motivation, and efficiency and will provide training and seminars but the petitioner does not identify the analytical methods to be used or the extent of any analysis of this information. The AAO is unable to conclude that the nature of these tasks include performing specialized or complex duties. The information provided is too ill-defined to elevate the position to one that requires the theoretical and practical application of a body of highly specialized knowledge, attained through a four-year course of specific study at the university level.

The AAO also notes that the petitioner indicated that the individual in the proffered position would conduct psychological testing, interpretations, interviews, and evaluations related to new and existing employees and would develop and evaluate applicants' tests. The petitioner's statement, however, does not provide a comprehensive understanding of the actual tasks involved in performing these duties. For example, it is not clear whether the tests are tests commonly administered when recruiting applicants for particular positions to test skill or knowledge or are tests that require psychoanalytical interpretation and evaluation. Moreover, the record of proceeding lacks evidence to show that the beneficiary has performed these duties in her capacity as the petitioner's human resources specialist since February 7, 2002. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The duties initially depicted in the record do not provide an understanding of how the nature of the duties is so specialized and complex that the individual performing the duties must have highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty.

In response to the director's RFE and on motion the petitioner through its counsels identified several duties as specialized and complex, such as speaking and writing effectively, analyzing health insurance benefits and retirement funds, conducting market surveys to become knowledgeable about the different salary rates offered in comparable industries, and analyzing training needs. [REDACTED] also indicates in his June 12, 2006 opinion that his opinion is based on the duties of the position that require extensive writing, research, analytical and supervisory skills, all of which are included in the theoretical course of study leading to a four-year university degree in one of the listed areas, such as Human Resources Management, Business Administration, Communications, or a related social sciences field such as Psychology. Although Dr. [REDACTED] paraphrases the petitioner's job description for the proffered position, [REDACTED] does not identify which of the duties will require extensive writing, research, analytical, or supervisory skills. Dr. [REDACTED] also fails to indicate which of the duties are so specialized or complex that they exceed the everyday tasks associated with a human resources position. Although footnoted above, the AAO reiterates that [REDACTED] opinion indicates that a majority of businesses "will utilize the services of a degreed Human Resources Manager," but does not indicate that a majority of businesses require the services of a degreed human resources manager or specialist, a fact confirmed by both the *Handbook* and the submitted advertisements. In addition, the AAO agrees with [REDACTED] opinion in that a company the size and nature of the petitioner "could legitimately require the services of a Human Resources Manager" to perform the duties listed in the petitioner's May 3, 2004 letter. However, the petitioner does not provide the substantiating evidence necessary to establish that the nature of its proffered position is so specialized and

complex, that it must be distinguished from that of a typical human resources manager/specialist or that the individual in the position must have knowledge that is usually associated with the attainment of a baccalaureate or higher degree.

The AAO does not find [REDACTED] opinion persuasive. The record does not contain evidence: that Dr. [REDACTED] interviewed the petitioner or the beneficiary of this petition; that [REDACTED] observed the petitioner's operations or the beneficiary's work; or that [REDACTED] reviewed the beneficiary's work product that might have included the use of extensive writing, research, analytical, or supervisory skills. Thus, [REDACTED]'s opinion that "the person whose employment is being sought in order to fill [the petitioner's] Human Resources Manager position will require that the applicant hold a Bachelor's Degree in an area such as Human Resources Management, Business Administration, Communications, or a related social sciences field such as Psychology," is without an adequate factual foundation. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The record does not establish that the proposed duties exceed the scope of a typical human resources manager/specialist. Counsel does not explain why [REDACTED]'s opinion, which appears contrary to the *Handbook's* report on this occupation and the job advertisements for employment in this field, should be given greater weight than the *Handbook* or other documentary information. [REDACTED] opinion is not sufficiently specific or documented to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO acknowledges the petitioner's president's assertion that its increased earnings demonstrate that the proposed duties of the proffered position are so specialized and complex as to require a bachelor's degree "in such areas as Human Resources Administration, Communications or Psychology." The petitioner, however, does not explain how the beneficiary's duties have evolved or otherwise exceeded the duties of a typical human resources position. The AAO reiterates that while a petitioner may believe that a proffered position requires a degree, such opinion does not establish the position as a specialty occupation.

The evidence of record does not establish that the nature of the proffered position is so specialized or complex that the individual in the position must have knowledge that is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has not established the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO acknowledges counsel's citation to a published federal district court case³ wherein the district court found the AAO had abused its discretion by failing to discuss the deficiencies of the record as the deficiencies related to the fourth criterion. The district court noted that the record of that matter contained the opinions of two professors⁴ that had not been considered when analyzing the position under the fourth criterion and the AAO's failure to address the opinions constituted an abuse of discretion.

³ *Fred 26 Importers, Inc. v. United States Department of Homeland Security*, 445 F.Supp. 2d 1174 (C.D. Cal. 2006).

⁴ The AAO observes that one of the professors mentioned in the [REDACTED] v. *United States*

In this matter as discussed above, the AAO finds that [REDACTED] opinion, the only opinion submitted, is not supported by an adequate factual foundation. To reiterate, [REDACTED] concludes without analysis that the petitioner's generic job description requires extensive writing, research, analytical, or supervisory skills but does not identify which of the duties requires the presence of these skills; [REDACTED] concludes without explanation that "the person whose employment is being sought in order to fill [the petitioner's] Human Resources Manager position will require that the applicant hold a Bachelor's Degree in an area such as Human Resources Management, Business Administration, Communications, or a related social sciences field such as Psychology." [REDACTED] does not offer an evaluation of which courses involving writing, research, analytical, or supervisory skills, at the university level, pertain to the petitioner's proffered position; rather, [REDACTED] seems to implicitly recognize that an individual may gain those skills through a general course of study at the university level. However, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. at 558. In addition, the record does not contain evidence that [REDACTED] interviewed the petitioner or the beneficiary, observed the petitioner's business operations or work sites, or reviewed the beneficiary's work product. [REDACTED] does not provide an analysis of the nature of the duties of the specific proffered position, other than to restate the petitioner's description of duties and offer a conclusion; the record does not contain adequate substantiating evidence explaining how the professor reached his conclusions.

Moreover, in contrast to the broad precedential authority of the case law of a United States Circuit Court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. The AAO acknowledges that it must provide a rational basis for its decisions. In this matter the AAO finds that the opinion offered to show that the nature of the petitioner's human resources manager/specialist position is specialized and complex is based on an inadequate analysis of the proffered position and an unsubstantiated claim of the necessity of the individual in the proffered position to have knowledge that is usually associated with the attainment of a baccalaureate or higher degree. Upon review of the totality of the record, including the description of the duties of the proffered position, the opinion submitted by [REDACTED], the nature of the beneficiary's business operations, and the lack of documentary evidence substantiating the duties of the position, the AAO finds that the nature of the proffered position is not so specialized or complex that the knowledge to perform the duties of the position is usually associated with the attainment of a baccalaureate or higher degree. The AAO further

Department of Homeland Security matter (Fred 26) is [REDACTED], a professor at the [REDACTED] [REDACTED] at the [REDACTED]. In the *Fred 26* matter, [REDACTED] also opined, based on his experience and research, that the human resources manager position requires writing, research, analytical and supervisory skills acquired in a bachelor's degree in an area such as human resources.

determined that the record does not contain evidence establishing the proffered position qualifies as a specialty occupation pursuant to any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the AAO notes that the record contains evidence that the beneficiary was previously approved for H-1B status on the basis of a petition filed by the same petitioner. However, prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO again notes that each nonimmigrant petition is a separate proceeding with a separate record and that when making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.8(d) and 8 C.F.R. § 103.2(b)(16)(ii). This record of proceeding does not indicate whether the director reviewed the prior record and the rationale for the prior decision. However, if that record contained the same evidence as submitted with this petition, CIS would have erred in approving the previously filed petition. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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 previous decision of the AAO, dated May 16, 2006, is affirmed. The petition is denied.