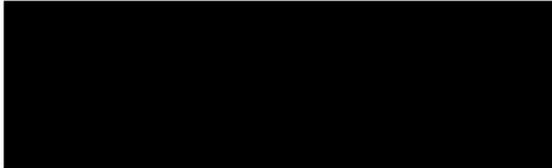


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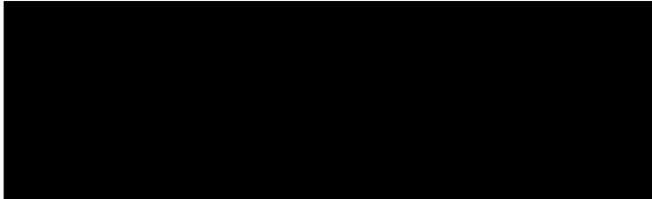
FILE: SRC 05 212 51409 Office: TEXAS SERVICE CENTER Date: SEP 05 2007

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.

James Blunzinger, for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the 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 shoe wholesaler and retailer that seeks to employ the beneficiary as a part-time contract administrator. 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 and the beneficiary is not qualified to perform the duties of 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) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The first 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as a part-time contract administrator. Evidence of the beneficiary's duties includes: the petitioner's July 26, 2005 letter in support of the petition and counsel's October 28, 2005 response to the director's RFE. As stated by the petitioner's president in a letter dated July 26, 2005, the proposed duties are as follows:

1. Overall responsibility for entering into contracts regarding the sale and purchase of shoes and accessories; review delivery schedules to ensure proper delivery and stocking at the petitioner's outlets;
2. Prepare bids and process specific requirements; review bids for conformity to contract requirements in determining acceptable bids; analyze pricing, financial reports, and other data to determine price proposals and bids;
3. Plan and direct sales programs to promote new markets, improve competitive position in area and provide fast and efficient customer service;
4. Negotiate contracts with manufacturers and suppliers; formulate and coordinate proposals and establish internal control and procedures; amend and/or extend contracts as needed;

5. Direct activities of personnel in sales, collections and logistical control, record keeping, receiving and shipping operations to execute the contracts; and
6. Liaise between customers and manufacturers to resolve issues regarding contracts.

In response to the director's RFE, counsel further describes the proposed duties as follows:

The beneficiary would perform services in areas of marketing, personnel, accounting, and financial matters. She would apply principles of employee and finance management as well as manage fund flows and perform analysis of financial management. Specifically, the proffered position is a contract administrator and sales manager. Her duties would be to manage marketing, sales accounting, and human resources administration and management; provide specialized administration relating to contracts for purchasing, sale, and administrative accounting and management controls; analyze sales statistics to formulate policy and to assist dealers in promoting sales. She would coordinate sales distribution by establishing sales territories, quotas and goals; advise dealers, distributors, and clients concerning sales and advertising techniques. She would prepare bids, process specific requirements, test and prepare progress reports; review bids for conformity to contract requirements in determining acceptable bids. He [sic] will negotiate contract with bidders, request and approve amendments and/or extensions to contracts and advise management of the contract rights and obligations; He [sic] will have overall responsibility for contracts with shoe manufacturers and distributors regarding sales, purchase, and delivery; examine performance requirements, delivery schedules, and cost estimates to ensure completeness and accuracy.

He [sic] would examine order requirements and delivery schedules. He [sic] would have managerial responsibility over staff, including promotions and benefits management. He [sic] would prepare reports and provide recommendations and procedures to reduce absenteeism and turnover; conduct training and need analysis, and evaluate training programs as well as prepare the budget of personnel operations. He [sic] would provide management leadership related to establishing human resources policies and procedures and to administer employee health, insurance, savings and hiring programs. She would also provide management training related to record keeping of insurance coverage and personnel movements, such as hiring, firing, promotions, and transfers.

The director found that the proposed duties do not require a bachelor's degree. The director also found that in response to the RFE, counsel radically changed the proffered position from its original description. 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, counsel asserts, in part, that the proffered position is a contract administrator/sales manager, and that the position has not been radically changed from its original description. Counsel also asserts that the

duties of a contract administrator are specialized and professional requiring the attainment of a bachelor's degree in business administration, management, or a related field. Counsel cites a court decision to state that whether a position is professional is unrelated to the company's size, salary, or prior company history of maintaining the position.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Although a review of the Administrative Services Managers training requirements in the *Handbook*, 2006-07 edition, finds that a manager of contract administration may qualify as a specialty occupation, the AAO does not concur with counsel that the proffered position is a specialty occupation. In this matter, neither the petitioner nor counsel describes duties requiring at least a bachelor's degree in business, human resources, or finance indicated in the *Handbook*. While the job duties generally refer to the petitioner's contracts for the purchase and sale of shoes, the petitioner has failed to delineate specific duties of contract administrator in the context of its wholesale and retail shoe business. Portions of counsel's brief clearly apply to a different petitioner and a different beneficiary, as counsel uses "he" and "she" interchangeably when referring to the beneficiary in the October 28, 2005 letter.¹ In addition, although information on the petition indicates that the petitioner has a projected gross annual income of \$1.5 million, the record contains no evidence in support of this claim, such as federal income tax returns. 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)).

The AAO finds that the proffered position is that of a sales manager. No evidence in the *Handbook*, 2006-07 edition, under the category of Advertising, Marketing, Promotions, Public Relations, and Sales Managers,

¹ The description of duties is almost identical to the duties described in another petition by a different petitioner represented by counsel: SRC 05 204 50479. Thus, the AAO must question the accuracy of the description of duties. The record provides no explanation for these inconsistencies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

indicates that a baccalaureate or higher degree in a specific specialty is required for a sales manager position. A wide range of educational backgrounds is suitable for entry into sales manager jobs, but many employers prefer individuals with related experience and a broad liberal arts background. Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

The AAO acknowledges counsel's citation of a court decision to state that whether a position is professional is unrelated to the company's size, salary, or prior company history of maintaining the position. However, the director's decision does not rely on the nature or size of the petitioner to conclude that the proffered position does not meet any of the requirements for a specialty occupation. Moreover, the complexity of the duties in relation to the petitioner's business must be analyzed. As discussed above, the petitioner has not established that the complexity of the proposed duties requires a baccalaureate degree in the specialty. 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)).

Regarding parallel positions in the petitioner's industry, the record contains Internet job postings for contract administrators, sales managers, and related positions. The AAO acknowledges counsel's assertion that even though these postings do not stipulate a bachelor's degree in a specific specialty, as demonstrated by job postings for positions such as civil engineers and software engineers, a possible explanation for the omission of a specific degree requirement is to limit the text size of each advertisement. The record contains job postings for the following positions: a sales representative for Harley Davidson Footwear; a retail/wholesale planner for a global fashion corporation founded in 1924; a vice president of sales with qualifications that include being an experienced executive in the high-end luxury market; a senior vice president for footwear sales and marketing for a well-established footwear company with duties that include overseeing the growth of its core customers and expanding mainstream independents throughout the United States; a vice president of footwear sales for a global apparel and footwear company; an account sales analyst for Adidas, which has approximately 16,000 employees worldwide; and a senior sales forecast analyst for Russell Athletic, an internationally branded apparel and sporting equipment company. The listings provided rely on duties unlike the duties listed by the petitioner and the businesses publishing the advertisements are not similar to the petitioner in size, number of employees, or level of revenue. The petitioner has not established that the duties listed in the advertisements are parallel to those described for the proffered position. The record also does not include any evidence from individuals, firms, or professional associations regarding an industry standard. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

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 submitted insufficient documentation 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) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

Counsel states, on appeal, that the duties of a contract administrator are specialized and professional requiring the attainment of a bachelor's degree in business administration, management, or a related field. As discussed above, however, the petitioner has not established that the proposed duties exceed in scope, specialization, or complexity those duties usually performed by sales managers, an occupational category that does not require a baccalaureate or higher degree in a specific specialty. Further, as indicated earlier in this decision, in light of the petitioner's unsupported assertions regarding basic financial information for its business and the generalized nature of the job duties described by the petitioner without reference to its daily business operations, the record does not establish a requirement for the level of knowledge requisite for this criterion. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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.

The director also found that the beneficiary was not qualified for the proffered position because the beneficiary's foreign education and employment experience did not qualify her for a specialty occupation. On appeal, counsel states, in part, that the beneficiary is qualified for the position because her combined education and employment experience are equivalent to a U.S. bachelor's degree in management, as demonstrated by the credentials evaluation.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- A credentials evaluation from Worldwide Education Evaluators, Inc., dated July 26, 2005, based on the beneficiary's foreign education and work experience, concluding that the beneficiary holds the U.S. equivalent of a bachelor's degree in sales management;
- Copies of the beneficiary's Bachelor of Science degree and corresponding transcript reflecting a major course of study in physiology, conferred by a university in Pakistan;
- Copies of the beneficiary's Master of Science degree in physiology and corresponding transcript, conferred by a university in Pakistan;
- A letter, dated July 14, 2005, from the Pakistani business Pick n Pack, certifying that the beneficiary worked at the said business from August 1991 to August 1998, as a sales manager, performing the following duties: preparing and reviewing bids, price analysis, financial reports, and other data to determine price proposals; and
- A second letter, dated November 5, 2005, from the Pakistani business Pick n Pack, certifying that the beneficiary began her employment with the said business in August 1991 as a sales manager having authority over the spending and allocation of funds, and performing the following duties: submitting financial reports, supervising the business's finance, preparing cash flow statements, participating in formulating policies, assisting executive management with planning budgets for internal units and departments, establishing standards for personnel administration and performance, advertising, and marketing; as a senior sales manager beginning in January 1993, the beneficiary performed the following duties: established new business contracts, negotiated with clients and purchasers, administered new and existing business contracts, trained sales personnel, prepared and reviewed bids, and coordinated sales distribution.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in business, human resources, finance, or a related field. The

beneficiary holds a foreign Bachelor of Science degree and a foreign Master of Science degree in physiology. The beneficiary, however, does not hold a baccalaureate degree from an accredited U.S. college or university in business, human resources, finance, or a related field, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in business, human resources, finance, or a related field. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant visa based on:

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

As noted above, the petitioner submitted a July 26, 2005 evaluation of the beneficiary's academic qualifications and experience.

The academic evaluation is based on the beneficiary's employment experience, her foreign Bachelor of Science degree, and her foreign Master of Science degree in physiology. The evaluator notes that the beneficiary completed three years of coursework toward a four-year bachelor's degree from a regionally accredited U.S. university. The corresponding transcript reflects coursework related primarily to physiology. The evaluator also notes that the beneficiary completed a one-year program of study and examinations and was awarded a Master of Science degree which, coupled with her three-year bachelor's degree, is equivalent to the completion of a four-year bachelor's degree from a regionally accredited U.S. university. As noted above, the beneficiary's foreign master's degree is in physiology. As such, the beneficiary's concentration of academic study is not related to

business, human resources, finance, or a related field.

The AAO observes that the author of the prepared evaluation notes that the conclusion that the beneficiary has obtained the equivalent of a U.S. bachelor's degree in sales management is based on the beneficiary's foreign bachelor and master's degrees and seven years of "progressively more responsible professional work experience." However, when attempting to establish that a beneficiary has the equivalent of a degree based on his or her combined education and employment experience under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may not rely on a credentials evaluation service. A credentials evaluation service may evaluate only a beneficiary's educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). To establish an academic equivalency for a beneficiary's work experience, a petitioner must submit an evaluation of such experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). In this matter, the petitioner has not submitted such documentation.

Thus, the AAO must consider whether the beneficiary's work experience coupled with her education is sufficient to establish that she is qualified to perform the duties of the specialty occupation. In this matter it is not. When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities² in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

On appeal, counsel for the petitioner references a letter from the beneficiary's previous employer that was submitted in response to the director's RFE and asserts that this letter shows the beneficiary has gained knowledge and experience from her employment from August 1991 to August 1998 at the Pakistani business Pick n Pack Super Store. As noted above, the record contains two letters from Pick n Pack Super Store, dated July 14, 2005 and November 5, 2005, respectively. It is noted that the second letter from Pick n Pack,

² *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 opinion, 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)(i)(C)(ii).

submitted in response to the director's RFE, contains more complex duties than those duties described for the beneficiary in the initial letter from Pick n Pack. For example, the initial description of the beneficiary's duties included preparing and reviewing bids, price analysis, financial reports, and other data to determine price proposals, while the second letter described the beneficiary's duties as participating in formulating policies, assisting executive management with planning budgets for internal units and departments, establishing standards for personnel administration and performance, advertising, and marketing, establishing new business contracts, negotiating with clients and purchasers, administering new and existing business contracts, and training sales personnel. Additionally, some of the text of the November 5, 2005 Pick n Pack letter is identical to the text of the petitioner's July 26, 2005 letter. Thus, the AAO must question the authenticity of the contents of the November 5, 2005 Pick n Pack letter. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Moreover, neither employment letter from the beneficiary's former employer describes the beneficiary's peers, supervisors, or subordinates' credentials. Further, the record contains no evidence to indicate that the beneficiary's expertise has been recognized in one of the ways discussed above. Thus, the record is insufficient to establish that the beneficiary's training and/or work experience includes the theoretical and practical application of specialized knowledge required by a specialty occupation; that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or degree equivalent in a specialty occupation; or that the beneficiary's "expertise" in a specialty occupation has been recognized.

The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. The petitioner has not established that the beneficiary has the requisite qualifications to perform the duties of a specialty occupation. For this additional reason, the petition will not be approved.

Accordingly, the AAO shall not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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