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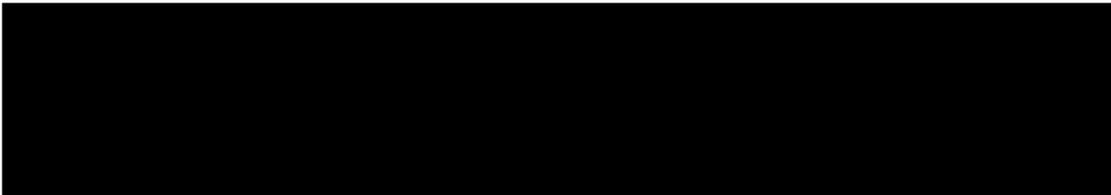


FILE: WAC 06 004 50391 Office: CALIFORNIA SERVICE CENTER Date: JUN 25 2007

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.

for *Michael T. Kelly*
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 lighting and electrical product wholesaler that seeks to employ the beneficiary as an administrative assistant. 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 on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel 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 notice of intent to deny the petition (NOID); (3) the petitioner's response to the director's NOID; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

The petitioner, a lighting and electrical product wholesaler with ten employees, was established in 1991. It proposes to hire the beneficiary as an administrative assistant. In its September 7, 2005 letter of support, the petitioner stated that the beneficiary would spend forty percent of her time supporting the petitioner’s marketing strategies. The only additional information offered regarding these duties appeared in counsel’s December 22, 2005 response to the director’s NOID, which stated that the beneficiary would continue to deal with the complexities of promoting the petitioner’s projects, monitoring its sales, and developing customer service guidelines. Regarding the remaining sixty percent of the duties, the petitioner’s letter of support stated that she would provide high-level administrative support by conducting research; preparing sales reports; handling information requests; performing clerical functions such as preparing correspondence, receiving visitors, arranging conference calls, and scheduling meetings; training and supervising lower-level clerical and sales staff; coordinating and directing office services, such as records and budget preparation, personnel, and housekeeping; greeting visitors and determining whether they should be given access to specific individuals; making travel arrangements for executives; managing and maintaining executives’ schedules; opening, sorting, and distributing incoming correspondence, including faxes and e-mail; preparing agendas and making arrangements for committee, board, and other meetings; preparing invoices, reports, memos, letters, financial statements, and other documents, using word processing, spreadsheet, database, and/or presentation software; and preparing responses to correspondence containing routine inquiries.

In his NOID response, counsel asserted that the duties of the proposed position were similar to those of market research analysts and operations managers. The director rejected this assertion, finding the position similar to that of an administrative assistant.

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.

In his NOID response, counsel stated that the duties of the proposed position are similar to those of market research analysts, operations managers, and promotions and marketing specialists. As will be noted *infra*, the AAO agrees with counsel that some of the duties of the proposed position are similar to those of promotions and marketing specialists. However, the AAO disagrees with counsel that the duties of the proposed position are similar to those of market research analysts or operations managers, and will begin its analysis by comparing the duties of the proposed position to those two occupations.

The AAO places its discussion of operations managers within its entry for top executives. At page 67, the *Handbook* states the following:

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

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

In addition to being responsible for the operational success of a company, top executives are increasingly being held accountable for the accuracy of their financial reporting, particularly among publicly traded companies. For example, recently enacted legislation contains provisions for corporate governance, internal control, and financial reporting.

The AAO does not find credible counsel's assertion that the duties of the beneficiary fall within this occupational grouping. Performing clerical functions, arranging conference calls, scheduling meetings, making travel arrangements for executives, managing and maintaining executives' schedules, opening and sorting mail, distributing incoming faxes, and preparing letters are not the duties of an operations manager.¹

The AAO next turns to counsel's assertion that the duties of the proposed position are similar to those of a market research analyst. At page 175, the *Handbook* states the following with regard to the employment of market research analysts:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. Gathering statistical data on competitors and examining prices, sales,

¹ Moreover, even if the AAO were to accept counsel's proposition that the duties of the proposed position corresponded to those of an operations manager, it notes that such positions do not normally qualify for classification as a specialty occupation under this first criterion. According to the *Handbook*, the formal education of top executives varies as widely as the nature of their responsibilities. While many top executives have a bachelor's or higher degree in business administration or liberal arts, many top executive positions are filled from within the organization by promoting experienced, lower-level managers when an opening occurs. The *Handbook* also states that in industries such as retail trade, it is possible for individuals without a college degree to work their way up within the company and become managers. Thus, the *Handbook* finds that general or operations manager positions generally impose no specific degree requirement on individuals seeking employment. As noted previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position.

and methods of marketing and distribution, they analyze statistical data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need. Often, they design telephone, mail, or Internet surveys to assess consumer preferences. They conduct some surveys as personal interviews, going door-to-door, leading focus group discussion, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the survey under the market research analyst's direction.

After compiling and evaluating the data, market research analysts make recommendations to their client or employer on the basis of 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 also may 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 also might develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

The AAO finds that it is market research analysts' work in the design and analysis of original market research that sets this occupation apart from what might otherwise be characterized as marketing or sales manager positions, employment that also requires the incumbents to perform marketing research as they seek to identify and expand business opportunities for their employers. The record of proceeding does not establish that such functions are encompassed within the duties proposed by the petitioner. As such, the AAO finds that the duties proposed by the petitioner are not analogous to those of a market research analyst.

Having discounted counsel's contentions regarding the similarity of the proposed position to those of operations managers and market research analysts, the AAO turns to its own analysis of the duties and responsibilities of the proposed position. In reaching its conclusion regarding the degree requirements of the proposed position, the AAO has compared the position's duties against those described for a range of professions. This review has found that virtually all of the proposed position's duties are listed among the occupations of public relations specialist, administrative services manager, administrative support worker supervisor and manager, and secretary and administrative assistant, as those positions are described in the *Handbook*.

At pages 271-272, the *Handbook*, states the following regarding the duties of public relations specialists:

An organization's reputation, profitability, and even its continued existence can depend on the degree to which its targeted "publics" support its goals and policies. Public relations specialists—also referred to as *communications specialists* and *media specialists*, among other titles—serve as advocates for businesses, nonprofit associations, universities, hospitals, and other organizations, and build and maintain positive relationships with the public. As managers recognize the importance of good public relations to the success of their organizations, they increasingly rely on public relations specialists for advice on the strategy and policy of such programs. . . .

People who handle publicity for an individual or who direct public relations for a small organization may deal with all aspects of the job. They contact people, plan and research,

and prepare materials for distribution. They also may handle advertising or sales promotion work to support marketing efforts.

The AAO finds that the forty percent of the beneficiary's duties that the petitioner refers to as a public relations and marketing specialist are generally encompassed within this job description.

In pertinent part, the *Handbook* states the following, at page 25, regarding the duties of administrative services managers:

Administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services to organizations as diverse as insurance companies, computer manufacturers, and government offices. These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, parking, and personal property procurement, supply, and disposal.

Specific duties for these managers vary by degree of responsibility and authority. First-line administrative services managers directly supervise a staff that performs various support services. Mid-level managers, on the other hand, develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer service, and define the responsibilities of supervisory-level managers. . . .

In small organizations, a single administrative services manager may oversee all support services. . . .

The nature of managerial jobs varies as significantly as the range of administrative services required by organizations. . . .

At page 479, the *Handbook* states the following with regard to the duties and responsibilities of administrative support worker supervisors and managers:

All organizations need timely and effective office and administrative support to operate efficiently. Office and administrative support worker supervisors and managers coordinate this support. These workers are employed in virtually every sector of the economy. . . .

Although specific functions of office and administrative support worker supervisors and managers vary significantly, they share many common duties. For example, supervisors perform administrative tasks to ensure that their staffs can work efficiently. . . .

Planning the work and supervising the staff are key functions of this job. . . .

Office and administrative support worker supervisors and managers usually interview and evaluate prospective employees. When new workers arrive on the job, supervisors greet

them and provide orientation to acquaint them with their organization and its operating routines. . . .

Office and administrative support worker supervisors and managers often act as liaisons between the administrative support staff and the professional, technical, and managerial staff.

Finally, the AAO looks to the *Handbook's* discussion of the duties and responsibilities of secretaries and administrative assistants. At page 482, the *Handbook* states the following:

As the reliance on technology continues to expand in offices, the role of the office professional has greatly evolved. Office automation and organizational restructuring have led secretaries and administrative assistants to assume responsibilities once reserved for managerial and professional staff . . . In spite of these changes, however, the core responsibilities for secretaries and administrative assistants have remained much the same: Performing and coordinating an office's administrative activities and storing, retrieving, and integrating information for dissemination to staff and clients.

Secretaries and administrative assistants are responsible for a variety of administrative and clerical duties necessary to run an organization efficiently. They serve as information and communication managers for an office; plan and schedule meetings and appointments; organize and maintain paper and electronic files; manage projects; conduct research; and disseminate information by using the telephone, mail services, Web sites, and e-mail. They also may handle travel and guest arrangements.

Based upon its reading of the *Handbook*, the AAO concludes that the duties of the proposed position as described by counsel and the petitioner combine the duties of public relations specialists, administrative services managers, administrative support worker supervisors and managers, and secretaries and administrative assistants. Having arrived at such a conclusion, the AAO next turns to the *Handbook* to determine whether these occupations normally require applicants for employment to have the minimum of a baccalaureate or higher degree, or its equivalent. The *Handbook* states the following regarding the educational requirements for public relations specialists:

There are no defined standards for entry into a public relations career. A college degree combined with public relations experience, usually gained through an internship, is considered excellent preparation for public relations work. . . .

The *Handbook* states the following regarding the educational requirements for administrative services managers:

Educational requirements vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. . . .

Specific requirements vary by job responsibility. For first-line administrative services managers or secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience . . . Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree. . . .

The *Handbook* states the following regarding the educational requirements for administrative support worker supervisors and managers:

Most firms fill office and administrative support supervisory and managerial positions by promoting office or administrative support workers from within their organizations.

Finally, the *Handbook* states the following regarding the educational requirements for secretaries and administrative assistants:

High school graduates who have basic office skills may qualify for entry-level secretarial positions. However, employers increasingly require extensive knowledge of software applications, such as word processing, spreadsheets, and database management.

These findings do not support a conclusion that a bachelor's degree in a specific field, or its equivalent, is the normal minimum requirement for entry into these positions. For public relations specialists, the *Handbook* states explicitly that there are no defined standards for entry. While a college degree combined with experience is excellent preparation for such a career, the statement that a certain degree is "excellent preparation" is not synonymous with the "normally required" standard imposed by the regulation. For administrative services managers, the *Handbook* states that experience may be the only requirement necessary for employment in a small organization. While the *Handbook* states that managers of highly complex services (such as contract administrators) generally need a bachelor's degree, the petitioner has not demonstrated that its proposed duties are "highly complex." For office and administrative support worker supervisors and managers, the *Handbook* states that most firms fill such positions by promoting office or administrative support workers from within their organizations. For secretaries and administrative assistants, the *Handbook* states that high school graduates with basic skills may qualify for entry-level positions.

The AAO does not find persuasive the information cited by counsel from *O*Net*. *O*Net* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. Its assessment (the JobZone classification) does not specify the particular type of degree, if any, that a particular position would require. Again, CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. For the same reason, the AAO finds the information from the *Standard Occupational Classification System (SOC)* unpersuasive as well. Accordingly, the AAO accords no weight to this information.

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 market research analyst, as such positions are described in the *Handbook*. Such is not the case here. Rather, the issue here is the AAO's finding that the *Handbook* does not support the petitioner's contention that the position

is a specialty occupation. 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.²

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

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the job postings submitted by counsel in response to the director's NOID and on appeal. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

First, the AAO notes that these job postings do not establish a specific degree requirement as an industry norm. For example, the unnamed distribution company in Valencia, California does not require a degree; rather its posting states that an undergraduate degree is "preferred." However, employer preferences are not synonymous with employer requirements. The AAO also notes that the postings from Epson America, Huttig Building Products, Spot Runner, the unnamed furniture manufacturer advertising its vacancy through Hudson Legal, the unnamed hedge fund advertising its vacancy through the Career Group, and the unnamed Beverly Hills, California company do not specify that the requisite degree come from any particular field of study. Essentially, a degree in any field of study would suffice.³

Also, the record fails to establish that any of these job postings come from companies that are "similar" to the petitioner, a lighting and electrical product wholesaler with ten employees. Epson America manufactures digital cameras, printers, scanners, and other imaging products. The unnamed Valencia, California

² The petitioner in this case cannot make such a determination, as it has documented no hiring history. 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*.

³ When a range of degrees can perform a job, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, the petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As noted previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position.

company is a distribution company. No information was provided regarding the business operations of Huttig Building Products but, based upon its name it does not appear as though it is a lighting and electrical product wholesaler. The Allegheny Ludlum Corporation is a processor and distributor and precision specialty metals. The unnamed company advertising its vacancy through Hudson Legal is a furniture manufacturer. No information was submitted regarding the business operations of Spot Runner or the unnamed company in Beverly Hills, California. The unnamed Los Angeles company advertising its vacancy through the Career Group is a hedge fund.

There is insufficient evidence to establish that the advertisers are similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, even if the AAO were to find that these companies were similar to the petitioner, the job postings are too few in number to establish an industry-wide standard.

Counsel's citation of *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Calif. 1989) regarding the director's finding that the petitioner had not satisfied the first prong of the second criterion in this matter is misplaced. 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 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 an executive chef at a small company are necessarily the same as those required to be a manager at a large company. See --- F.Supp.2d ---, 2006 WL 3770781 (E.D. Mich. 2006).

Finally, the AAO finds that the information regarding the duties and responsibilities of the advertised positions is general and does not support a meaningful comparison of their actual performance and specialty knowledge requirements to those of the proposed position. Thus, while relevant to this proceeding, the job postings submitted by counsel are insufficient to establish the petitioner's degree requirement as an industry norm in parallel positions among similar organizations. The petitioner has not satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of the second criterion 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. However, there has been no demonstration that the proposed position is more complex or unique than the general range of public relations specialist, administrative services manager, administrative support worker supervisor and manager, and secretary and administrative assistant positions in other, similar organizations. The *Handbook* indicates that such positions generally do not normally require at least a baccalaureate degree in a specific specialty; and the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions.

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 turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a

petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

However, no such evidence has been submitted. Accordingly, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) has not been satisfied.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty occupation. The evidence of record, as discussed above, does not establish that the nature of the duties is specialized and complex. A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge and skill than that normally expected of public relations specialist, administrative services manager, administrative support worker supervisor and manager, and secretary and administrative assistant positions in other, similar organizations. The petitioner has not established that its proposed position is more complex than the one outlined in the *Handbook*, which does not demand a usual association with at least a bachelor's degree in a specific specialty.

Accordingly, the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation, and the petition was properly denied.

Beyond the decision of the director, the AAO finds that the petition may not be approved for another reason, as the petitioner has failed to establish that the beneficiary qualifies 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)(1), as described above, which requires a demonstration that the beneficiary holds a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. The beneficiary did not

obtain a degree from a United States institution of higher education, so she does not qualify under the first criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the occupation from an accredited college or university. No such evidence was submitted.

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

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

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

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

The beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as no evaluation has been submitted.

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).

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), as no evaluation has been submitted.

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. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the occupation; and 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.

The evidence of record traces the beneficiary's work history from 1992 through the present. As provided by regulation, the formula utilized by CIS is three years of specialized training and/or work experience for each year of college-level training that the alien lacks. A baccalaureate degree from a United States

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).

institution of higher education would require four years of study. The AAO's next line of inquiry is therefore to determine whether at least six years⁵ of this work experience included the theoretical and practical application of specialized knowledge required by the specialty, whether it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the specialty, and whether the beneficiary achieved recognition of expertise in accounting as evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

However, the evidence submitted by the petitioner regarding the beneficiary's previous work experience does not establish that it included the theoretical and practical application of specialized knowledge, that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent, and that the beneficiary achieved recognition of expertise as evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Accordingly, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Therefore, the petitioner has not demonstrated that the beneficiary qualifies to perform the duties of a specialty occupation. For this additional reason, the petition may not be approved.

Finally, the AAO notes that this petition is for an extension of a previously-approved petition. However, 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 the prior case was similar to the proposed 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 substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition was 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).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation. Beyond the decision of the director, the petitioner has also failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

⁵ The AAO will recognize two years of university-level study in general coursework taken while the beneficiary earned her degree in the Philippines.

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.