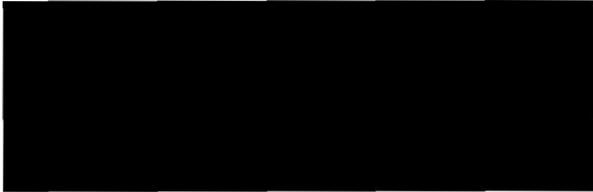


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FILE: SRC 05 135 51219 Office: TEXAS SERVICE CENTER Date: JUN 02 2008

IN RE: Petitioner:
Beneficiary:



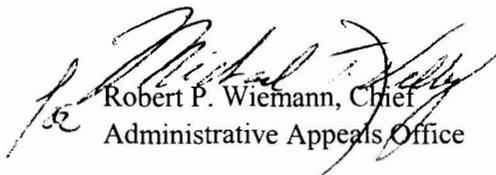
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, Texas Service Center, denied the nonimmigrant petition and the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on motion to reconsider. The motion will be granted. The petition will be denied.

The petitioner operates a convenience store/gas station, has three employees, and claimed a gross annual income of \$232,010 when the petition was filed. It seeks to employ the beneficiary as a market research analyst. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The record of proceeding includes: (1) the Form I-129 filed April 8, 2005 and supporting documents; (2) the director's April 19, 2005 request for further evidence (RFE); (3) counsel for the petitioner's May 29, 2005 response to the RFE; (4) the director's June 14, 2005 denial decision; (5) the Form I-290B and counsel's brief in support of the appeal; (6) the AAO's dismissal of the appeal; and (7) counsel's motion to reconsider. The AAO reviewed the record in its entirety before rendering its decision.

On June 14, 2005, the director denied the petition, determining that the petitioner had failed to establish that the proffered position qualifies as a specialty occupation and that the beneficiary is qualified to perform services in a specialty occupation. On appeal, counsel for the petitioner asserted that the beneficiary would be performing the duties of a market research analyst, as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, and that the *Handbook* indicated a bachelor's or higher degree was required for such a position. Counsel also contended that 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. Counsel also claimed that the evaluation of the beneficiary's education and work experience established that the beneficiary is qualified to perform the duties of a market research analyst.

The AAO dismissed the appeal. Upon review of the information in the *Handbook*, the AAO concluded that a baccalaureate degree in a variety of disciplines would be sufficient for entry into many market research positions; thus a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into a market research analyst position. The AAO also reviewed the job announcements submitted but found that the advertisements did not indicate that the businesses advertising were similar to the petitioner's industry or similar to the petitioner in size and scale of operations. The AAO further found that the petitioner's description of the proffered position's duties to be generic language lifted directly from the *Handbook*, thus failing to demonstrate a complexity or specialization in the job duties that required a baccalaureate level of knowledge in a specific field of study. The AAO did not consider the beneficiary's qualifications as his qualifications would be relevant only if the proffered position is a specialty occupation.

The AAO grants the motion to reopen and reconsider to more thoroughly discuss the deficiencies of the petitioner's description of the proffered position and the failure of the petitioner to relate the duties of the proffered position to the petitioner's convenience store/gas station business. The AAO will also briefly discuss the beneficiary's qualifications.

The first issue in this matter is whether the petitioner has established that the proffered position is 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) 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 petitioner indicated that the salary for the proffered position would be \$21,528 per year and provided the following description of the duties of the proffered position:

- Analyzing statistical data on past sales to predict future sales;
- Gathering data on competitors and analyzing prices, sales, and methods of marketing and distribution;
- Devising methods and procedures for obtaining the data the company needs as well as research market conditions in local, regional, or national area to determine potential sales for data gathering, such as surveys, opinion polls, or questionnaires;
- Examining and analyzing statistical data to forecast future marketing trends; and
- Collecting data on customer preferences and buying habits and preparing reports and graphic illustrations of findings.

In a May 29, 2005 response to the director's RFE, counsel for the petitioner provided the same list of duties and responsibilities for the proffered position and added:

The Petitioner's future plans include expansion to multiple locations over the next three years, as well as investment in the hospitality industry. Accordingly[,] the Petitioner needs a market research analyst with the Beneficiary's knowledge and experience in order to attain its expansion and diversification goals. The position of market research analyst offered by the Petitioner is specialized in nature and involves significant responsibilities and complexities associated with directing the organization's marketing of its products and services.

The petitioner also submitted three job announcements for positions of: (1) a market research analyst for a company in an undisclosed industry that listed general duties in the job description and required a bachelor's degree in business administration or related fields and noted the salary range as \$35,000 per year; (2) a market research analyst for a company in an undisclosed industry that listed almost identical general duties as the advertised position in (1) and required a bachelor's degree in business administration and noted the salary range as \$40,000 per year; and (3) a market research specialist for a company in the banking and financial services industry who would assist in business development activities for outsourcing and required a bachelor's degree in business administration or marketing and did not provide a salary range.

On motion, counsel asserts that the *Handbook*, establishes that a baccalaureate or higher degree is the minimal educational requirement for a market research analyst and that the *Handbook* sets forth a narrowly defined group of degrees which focus on business related subjects as necessary to satisfy the educational requirement. Counsel also contends that the description of the duties of the proffered position include specialist duties and responsibilities because the duties require theoretical and practical application of highly specialized

knowledge. Counsel claims that the AAO's use of the *Handbook* to compare the duties in the petitioner's job offer is hypocritical when used as a reason to deny the petition.

Counsel's assertions are not persuasive. Both the 2004-2005 and the 2006-2007 *Handbook* provide the following generic information regarding the occupation of marketing 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, 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 discussions, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the surveys 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 may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. Market research analysts also might develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

* * *

Because of the applicability of market research to many industries, market research analysts are employed throughout the economy. . . .

The *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many market and survey research jobs. It does not however, indicate that the degrees held by candidates must be in a field directly related to market research as required for classification as a specialty occupation. Rather, the 2004-2005 *Handbook* indicates: "market and survey researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline" and "courses in mathematics, statistics, sampling theory and survey design and computer science are extremely helpful" and in addition to courses in business, marketing, and consumer behavior, prospective market and survey researchers should take other liberal arts and social science courses, including economics, psychology, English, and sociology. The 2006-2007 *Handbook* provides similar information when discussing the variety of courses that would assist a prospective market and survey researcher in obtaining employment. The AAO disagrees with counsel's interpretation that the *Handbook* sets forth a narrowly defined group of degrees for employment as a market research analyst. Rather, the *Handbook* discusses a diverse group of courses from statistics and mathematics to consumer behavior, English, sociology, psychology, and communications and business administration, as well as marketing as providing an adequate educational background for employment in the marketing field. The courses discussed are not part of sufficiently similar majors to denote

a specific field of study. Accordingly, the title of market research analyst does not establish that the occupation is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Moreover, in this matter, the petitioner's description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention that it is offering a specific specialty occupation position.

At the time of filing, the petitioner offered a generic description of the beneficiary's market research duties, one that appeared to describe the occupation of market research analyst rather than that of a specific position. As previously observed, the petitioner borrows liberally from the *Handbook's* descriptions of the occupation of a market research analyst in an effort to establish that the beneficiary would perform this work. However, a petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* when discussing an occupational title, e.g., a market research analyst gathers statistical data on competitors and examines prices, sales, and methods of marketing and distribution. Neither can the petitioner establish its employment as a specialty occupation by making conclusory statements regarding the position, rather than defining the activities associated with the position, for example, describing how the beneficiary assesses the market conditions for the petitioner. 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)). A generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. Contrary to counsel's claim of hypocrisy, the AAO uses the *Handbook* as an overview and guide when discussing particular occupations, but requires that when establishing a position as a specialty occupation that the petitioner describe the specific duties and responsibilities to be performed by the beneficiary in relation to the petitioner's particular business interests.

In this matter, for instance, the petitioner indicates the beneficiary will analyze statistical data on past sales to predict future sales, will gather data on competitors, as well as devise methods and procedures for obtaining the data the company needs such as surveys, opinion polls, or questionnaires. These are generic duties outlined in the *Handbook*. They offer no insight into the daily duties of the proffered position as those duties relate to the petitioner's operation of a convenience store/gas station. Counsel asserts that collecting data on customer preferences and buying habits and preparing reports is a duty not found in the *Handbook* and thus is an example of a specialized duty. Although the *Handbook* does not use this exact language, the focus of the *Handbook's* discussion of market research analysts is the collection of data on customer preferences and reporting on or otherwise utilizing that data. Again, the petitioner does not provide the detail of how the data will be collected, does not identify specific projects relevant to its convenience store/gas station, nor does the petitioner explain the necessity of market research in connection with its business. The petitioner does not explain how collecting data on customers' preferences or any other particular duty encompasses the duties of a specialty occupation. The description provided is insufficient to enable the AAO to analyze and ultimately conclude that the daily duties of the proffered position actually encompass the duties of a market research analyst. The general description submitted is simply an overview of an occupation without the necessary accompanying details identifying meaningful duties in relation to the petitioner's business.

The AAO acknowledges counsel's reference to the petitioner's future plans of expansion and investment in the hospitality industry in response to the director's RFE. Although the director did not request evidence substantiating the petitioner's expansion plans, the AAO in its decision observed that the petitioner had not provided any information regarding the market research associated with the petitioner's expansion plans. The record on motion does not clarify or otherwise expand upon the petitioner's expansion plans. The record does not include the petitioner's business plan, does not include tax returns or other evidence substantiating that the petitioner's business is expanding, does not contain evidence of sales projections, debt repayment schedules, loan applications, correspondence, or other documentary evidence related to the acquisition or proposed acquisition of other retail outlets or expansion into the hospitality industry. The petitioner, again, has not identified the particular duties or responsibilities of the proffered position that would be associated with the petitioner's expansion or diversification goals.

To reiterate, upon close review of the description provided, the petitioner has opted to describe aspects of a market research analyst occupation without providing a description of the specific duties as they directly relate to the petitioner's business. Here, the petitioner has not described how the individual in the proffered position will perform the services of a market researcher in relation to its business, has not documented what the market researcher will actually do in the area of sales and marketing in the convenience store/gas station industry, and has not documented its expansion objective. The AAO is left with general information about a market research analyst occupation with no language or documentary evidence connecting the nonspecific duties of that occupation to the petitioner's business. The description does not focus on the specific requirements of this petitioner who has three employees and an undocumented claimed gross annual income of \$232,010.

The AAO declines to accept a broad overview of an occupation as definitive of a particular position's daily duties. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise would require acceptance of any petitioner's generic description to establish that its proffered position is a specialty occupation. CIS, however, must rely on a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary in relation to its business and what the proffered position actually requires, in order to analyze and determine whether the duties of the position require a baccalaureate degree in a specialty. In this matter the petitioner has not provided such a description. It is not possible to identify the actual daily duties required of the position and, therefore, whether the position meets the statutory definition of a specialty occupation, that is employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation.

The AAO finds that the petitioner has failed to establish that the occupation of a market research analyst is a specialty occupation and further, the petitioner has failed to provide a definitive description of the duties and responsibilities of the proffered position as it relates to the petitioner's business. The petitioner has failed to

establish the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO has also examined the three job announcements the petitioner provided to establish the petitioner's degree requirement as the norm within its industry. However, the job announcements submitted do not show that the advertising businesses are similar to the petitioner in size, number of employees, or level of business. As the record does not establish the actual duties of the proffered position as it relates to the petitioner's business, the use of similarly general descriptions for organizations dissimilar to the petitioner does not assist in demonstrating that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In addition, two of the three job advertisements set out salaries that are significantly higher than the salary of the proffered position. A review of the totality of the job announcements, the job descriptions contained therein, and the type of organizational entities advertising the positions, does not demonstrate that the proffered position is parallel to positions offered by organizations similar to the petitioner, which require a bachelor's degree in a specific specialty. Further, without a meaningful job description, the petitioner may not distinguish the proffered position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion. The petitioner has failed to establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Neither counsel nor the petitioner claim that the petitioner normally requires a degree or its equivalent for the position as required to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The record contains no evidence of the petitioner's past employment practices for the proffered position.

Counsel's assertion on motion that the proffered position should be considered a specialty occupation based on the complexity of the duties is not persuasive. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As determined above, the record does not contain a meaningful description of the duties of the proffered position; thus the petitioner cannot point to any particular generally described element of the description and contend that the nature of the position is so complex or specialized that it must be considered a specialty occupation. The record does not provide any evidence that the proffered position encompasses duties that are complex and specialized in regard to the petitioner's business. Without such evidence, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the totality of the evidence submitted in support of the petition, the petitioner failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this issue.

The next issue in this matter is whether the petitioner established the beneficiary's eligibility to perform the duties of a specialty occupation.

The petitioner has presented evidence that the beneficiary obtained a bachelor's of science degree in the principal subject of physics from the Sardar Patel University in December 1992. The petitioner also provided

a copy of a letter dated June 16, 2004 confirming the beneficiary's employment as a manager in logistics and administration since February 15, 1996 with Hunter Douglas India. The author of the letter indicated that the beneficiary: planned and provided administrative services to all the employees located at the factory; planned and assisted in the logistics of physical distribution; liased and interacted with several external statutory bodies; participated in the welfare activities of the employees; prepared management reports pertaining to his functional area; and performed other responsibilities as assigned to him from time to time. The petitioner further provided an undated evaluation of the beneficiary's work experience and formal education authored by

Associate Dean at the School of Business Administration, University of Miami. ██████████

opined that the beneficiary's eight years and four months of experience in management is the equivalent of 83 semester credit hours in the business field. ██████████ concluded that the beneficiary's academic education was equivalent to a U.S. bachelor's degree in physics (120 semester credits) and that this degree when combined with the beneficiary's work experience equivalent to 83 semester credits, resulted in a bachelor's degree in business administration with a major in management. ██████████ also indicated that in his position on the School of Business Undergraduate Admissions Committee, he is called upon to grant course waivers based upon work and professional experience and that as Associate Dean he is authorized to grant credits for degree purposes for University of Miami students who have completed internships.

Upon review of the evidence in the record regarding the beneficiary's qualifications to perform the duties of a specialty occupation, the AAO finds the evidence unpersuasive. Preliminarily, the AAO finds that the beneficiary appears qualified to perform the duties of a market research analyst, an occupation that does not require a bachelor's degree in a specific specialty. However, the record does not evidence that the beneficiary is eligible to perform the duties of 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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) 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, the 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 beneficiary in this matter does not hold a United States degree in a specific specialty. The beneficiary in this matter holds a foreign degree that has been evaluated to be the equivalent of 120 hours of semester credits toward a bachelor's of science degree in physics at a regionally accredited institution of higher education in the United States.¹ Obtaining 120 semester credits toward a physics degree is not the foreign equivalent of a United States baccalaureate or higher degree. The beneficiary does not hold a State license, registration or certification which authorizes him to fully practice a specialty occupation. The only criterion applicable in this matter would be 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

¹ AACRAO Electronic Database for Global Education (EDGE); a web-based resource for educational evaluations, indicates that the *Bachelor of Science* degree awarded in India represents the attainment of a level of education comparable to two to three years of study at a bachelor's level in the United States. Such a degree is not the equivalent of bachelor's degree in the United States.

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 evaluation authored by ██████████ does not meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), which requires that an evaluation of education and work experience be 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. Although, in a July 26, 2004 letter, ██████████ indicates that he is called upon to grant course waivers based upon work and professional experience, granting course waivers is not the same as granting college-level credit. Likewise when ██████████ indicates he is authorized to grant credits for degree purposes to University of Miami students who have completed internships, his authority is restricted to the limited circumstances associated with internships completed by a University of Miami student. The record does not contain persuasive evidence that ██████████ has authority to grant college-level credit for training and/or experience in business administration or that the University of Miami has a program for granting such credit based on an individual's training and/or work experience. Thus, ██████████'s letter does not establish the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The record does not contain evidence that the beneficiary is eligible to perform the duties of a specialty occupation pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(2)(3)² or (4).

Turning to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the AAO observes that CIS must make the determination as to whether the beneficiary has acquired the equivalent of a degree through a combination of education, specialized training, and/or work experience in areas related to the specialty. To meet this first prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS must consider whether the beneficiary's work experience coupled with his academic education is sufficient to establish that he 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

² Although the beneficiary has a foreign degree, M█████████ as a representative of a credential evaluation service did not find that the beneficiary's foreign degree was the equivalent of a bachelor's degree awarded by a United States regionally accredited university, but only that the beneficiary's foreign education was equivalent to 120 semester credit hours toward such a degree. Moreover, as indicated in footnote 1, EDGE indicates that the *Bachelor of Science* degree awarded in India represents the attainment of a level of education comparable to two to three years of study at a bachelor's level in the United States

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 only available information in the record regarding the beneficiary's work experience is the letter submitted by the beneficiary's foreign employer.

The AAO does not find the information in this letter sufficient to establish that the beneficiary's work experience included the theoretical and practical application of the specialized knowledge required by a specialty occupation or that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The record does not contain evidence of the beneficiary's peers, supervisors, or subordinates while working at Hunter Douglas India or whether these individuals held degrees or specialized knowledge associated with a bachelor's degree in a specific discipline. The AAO also finds the brief description of the beneficiary's duties when employed at Hunter Douglas India insufficient to demonstrate that the beneficiary's work experience included the theoretical and practical application of the specialized knowledge required of an individual who through study has attained a bachelor's degree in a specific field of study. The record lacks evidence that demonstrates that the beneficiary has attained the equivalent of a bachelor's degree in a specific discipline through a combination of his education, specialized training, and work experience. The petitioner has not established the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For this reason, the AAO determines that the petitioner has not established that the beneficiary is qualified to perform the duties of the specialty occupation.

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requires that the petitioner 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 authorities³ 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. Although [REDACTED] indicates that he is a recognized authority and that his opinions have been accepted by CIS in the past, the AAO finds his opinion unpersuasive in this matter.

[REDACTED] apparently relies on the beneficiary's foreign employer's letter outlining the beneficiary's duties for an eight-year period. As observed above, the foreign employer's letter does not provide a detailed description of the beneficiary's duties nor does the letter provide an understanding of the beneficiary's progression of expertise in business or management during the eight years he was employed at Hunter Douglas India. There

³ *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).

is thus an inadequate factual foundation established to support the opinion. 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 petitioner has not provided recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation. The petitioner has not established the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The record does not contain evidence that the beneficiary is eligible to perform the duties of a specialty occupation.

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. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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