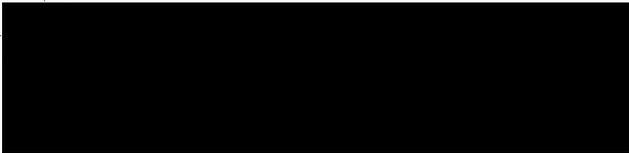


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U.S. Citizenship
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Services

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FILE: WAC 02 288 51764 Office: CALIFORNIA SERVICE CENTER Date: DEC 09 2005

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:
[Redacted]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director 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 real estate company that seeks to employ the beneficiary as an accounts manager. 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, finding that the proposed position was not a specialty occupation and that the beneficiary was unqualified to perform the duties of a specialty occupation. The director found that the duties of the proposed position were similar to those of marketing manager.

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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s request for evidence (RFE); (3) the petitioner’s RFE response and supporting documentation; (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.

On appeal, counsel contends that the director erred in denying the petition. Counsel asserts that the duties of the proposed position are similar to those of management analysts and market research analysts. Counsel also contends that the director did not identify any similarities between the proposed position and those of advertising, marketing, promotions, public relations, and sales managers.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The AAO does not agree with counsel that the duties of the proposed position are similar to those of management analysts. The *Handbook* reveals that the beneficiary’s duties do not rise to the level of a management analyst, an occupation that normally qualifies as a specialty occupation. According to the *Handbook*, management analysts, often referred to as management consultants in private industry, analyze and propose ways to improve an organization’s structure, efficiency, or profits. The *Handbook* reports that analysts and consultants collect, review, and analyze information in order to make recommendations to managers. They define the nature and extent of problems; analyze relevant data, which may include annual revenues, employment, or expenditures; interview managers and employees while observing their operations; and develop solutions to problems. Once a course of action is decided, consultants report their findings and recommendations to the client, and for some projects, consultants are retained to help implement their suggestions. According to the *Handbook*, firms providing management analysts vary in size from a single practitioner to a large international organization employing thousands of consultants.

The *Handbook* provides the following information regarding the organizations in which management analysts are commonly employed:

Management analysts held about 577,000 jobs in 2002. Thirty percent of these workers were self-employed, about one and a half times the average for other management, business, and financial occupations. Management analysts are found throughout the country, but employment is concentrated in large metropolitan areas. Most work in management, scientific, and technical consulting firms, in computer systems design and related services firms, and for Federal, State, and local governments. The majority of those working for the Federal Government are in the U.S. Department of Defense.

The *Handbook's* quoted passage does not mention that the petitioning entity, a real estate company with five employees, would be a likely employer of a management analyst. This passage supports the AAO's determination that the duties of the proposed position do not correspond to those of a management analyst.

Moreover, the beneficiary would be unqualified to perform the duties of a management analyst. According to the *Handbook*, management analysts in the private sector are required to possess a master's degree in business administration or a related discipline.

Nor does the AAO agree with counsel that the duties of the proposed position are similar to those of market research analysts. Market research analysts analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. As a portion of their responsibilities, they devise methods and procedures for obtaining needed data, often designing telephone, mail, or Internet surveys to assess consumer preferences. The duties of the proposed position do involve some market research and analysis of sales data, but do not involve market research of the complexity performed by market research analysts.

Moreover, the beneficiary is unqualified to perform the duties of a market research analyst. The *Handbook* notes that market research analysts generally possess graduate degrees in economics, business administration, marketing, statistics or a closely related discipline. Entry level positions such as research assistants, administrative or management trainees, marketing interviewers, or professional sales positions may be filled by individuals possessing only a bachelor's degree. However, counsel does not suggest that the proposed position is that of a research assistant, administrative or management trainee, marketing interviewer, or a professional sales position, the duties of which could be performed by an individual possessing a bachelor's degree. The petitioner has not established that the beneficiary possesses a graduate degree in economics, business administration, marketing, statistics or a closely related discipline. The beneficiary is not, therefore, qualified to perform the duties of a market research analyst.

Rather, the AAO agrees with the director that the duties of the proposed position are similar to those of a marketing manager. According to counsel's May 12, 2004 response to the director's request for evidence, thirty percent of the duties of the proposed position would consist of the following:

Evaluate opportunities for new business. Specifically, [the beneficiary] will conduct research on client preferences, market conditions[,] and price and location variations. [The beneficiary] will also evaluate financial strength, sales strategies and techniques, real estate trends[,] and client predispositions. [The beneficiary] will look for ways to develop sales and purchasing businesses as well as establish sales trends within the industry.

Thirty percent of the duties of the proposed position would consist of the following:

[The beneficiary] will evaluate existing markets and will perform real estate competitor analysis. Specifically, [the beneficiary] will, with respect to [the petitioner's] competitors, identify real estate background, market concentration, current customers, current contracts, corporate improvements, strategies, and direction.

Twenty percent of the duties of the proposed position would consist of the following:

[The beneficiary] will identify prospective markets and develop strategies to maximize penetration. More specifically, [the beneficiary] will match [the petitioner's] listings against individual clients and needs. Strategies are developed by formulating solutions unique and beneficial to the real estate industry.

Fifteen percent of the duties of the proposed position would consist of the following:

[The beneficiary] will research market trends and affiliations as a basis for real estate pricing and negotiation. This requires four steps. First, [the beneficiary] must evaluate comparative pricing structures given property location, desirability[,] and seller specifications. Second, [the beneficiary] will compare pricing among the industry and gauge property uniqueness and similarities. Third, [the beneficiary] must evaluate client incentives such as mortgage rate fluctuations, financing programs[,] and other financial aspects of property purchase. Lastly, [the beneficiary] must make available a thorough analysis that will assist brokers and real estate agents in the sale of property.

Five percent of the duties of the proposed position would consist of the following:

[The beneficiary] will also research and inform [the petitioner's] management and employees as to potential pricing concessions and negotiating latitude in property sales and negotiation.

The *Handbook* provides the following description of the duties of a marketing manager:

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, including *product development managers* and *market research managers*, they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets—for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users.

The duty of a marketing manager to determine demand for products and services is closely related to the duties of the proposed position to "evaluate opportunities for new business" and "evaluate existing markets," which would each occupy thirty percent of the beneficiary's time. The duty of a marketing manager to identify potential markets is similar to the beneficiary's duty to "identify prospective markets," which is to occupy twenty percent of her time. The duty of a marketing manager to develop pricing strategy with an eye toward maximizing the firm's share of the market is closely related to the beneficiary's duty to "research market trends and affiliations as a basis for real estate pricing and negotiation," which would occupy fifteen percent of her time.

Accordingly, the AAO agrees with the director that the duties of the proposed position are very closely related to those of a marketing manager as outlined in the *Handbook*. The AAO next turns to the *Handbook's* discussion of the educational qualifications required for marketing managers:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous. . . .

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists. In small firms, where the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires a showing that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the field. The *Handbook* indicates that most marketing manager positions are filled on the basis of experience (most positions “are filled by promoting experienced staff or related professional personnel”). Moreover, the fact that some employers “prefer” a degree or that individuals possessing degrees “should have the best job opportunities” does not rise to the “normally required” provision of the regulation. As such, marketing managers do not normally qualify as specialty occupations under the first criterion.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO has reviewed the job postings submitted by counsel in response to the director's request for evidence. However, these job postings do not satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as counsel 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.

No evidence has been submitted to establish that these postings are from organizations similar in size or scope of operations to the petitioner, a real estate company. No information, other than a statement that the company has some relation to “catalog sales,” is provided regarding the unnamed company posting its notice of vacancy through Monster.com. Nor is any information submitted regarding Praxair, Inc., other than that it is a Fortune 500 firm. Nestle Waters North America is a bottled spring water company. Verizon Wireless is a wireless telecommunications company, and Waste Management is, as indicated by its name, a waste management company.

Praxair indicates that a bachelor's degree is required, but it does not indicate that it must be in a specific field. However, as noted previously, CIS interprets the degree requirement to require a degree in a specific specialty that is directly related to the proposed position. 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). In the *Michael Hertz* case, the Commissioner held that a petitioner must demonstrate that a proposed position requires a precise and specific course of study that relates directly and closely to the position in question. Thus, to prove that a proposed position requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that it requires the attainment of a bachelor's or higher degree in a specialized field of study.

The posting from Nestle Waters North America does not state that a degree is required, but that it is preferred. Verizon Wireless will accept work experience in lieu of a degree.

Counsel submits three more job postings on appeal. Mathsoft offers engineering enterprise solutions, so it is not similar to the petitioner in size or scope of operations. The companies posting the other two notices, Reis and an unnamed organization recruiting through CoreNet Career Services, both appear to be real estate companies.

The postings from Reis suffers the same deficiency as the posting from Praxair. Reis states that a degree is required, but does not require that it be in a specific field. Again, CIS interprets the degree requirement to require a degree in a specific specialty that is directly related to the proposed position, and 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. at 558.

Therefore, counsel has submitted only one job posting that is relevant for the purpose of determining whether its degree requirement exists in parallel positions among similar organizations. However, one posting is not sufficient to indicate an industry-wide standard.

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

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as they are similar to those of marketing managers as discussed in the *Handbook*, which do not require a degree. The record contains no documentation to support a finding that the proposed position is more complex or unique than marketing manager positions at other, similar organizations.

Therefore, the petitioner cannot establish that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the proposed position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. No evidence has been submitted, nor has the petitioner contended, that the position qualifies as a specialty occupation under this criterion.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. There is no information in the record to support a finding that the proposed position is more complex or unique than marketing managers in other, similar organizations. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied.

The second issue to be discussed here is whether the beneficiary is qualified to perform the duties of a specialty occupation. The AAO finds that she does not. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary did not earn a degree from a United States institution of higher education, so she does not qualify under the first criterion.

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 specialty occupation from an accredited college or university. No such evaluation has been submitted, so she cannot qualify under the second criterion.

The record does not demonstrate, nor has counsel contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty 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 specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is the fourth criterion under which the petitioner seeks to classify the beneficiary's combination of education and work experience. 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.

No evaluation of the beneficiary's education and/or work experience has been submitted, so 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) cannot be satisfied.

The record reflects that the beneficiary graduated from a foreign university with a bachelor of science degree in business administration. 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 was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary is unqualified under this criterion because 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 specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and 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 occupation¹;
- (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.

Counsel's submission traces the beneficiary's work experience from July 1988 onward (while the beneficiary earned her degree in 1984, there is no evidence in the record to indicate where she worked between 1984 and 1988), for a period of fourteen years and two months (the petition was filed in September 2002). The AAO's next line of inquiry is therefore to determine whether this work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, whether it was gained while working with peers, supervisors, or subordinates who

¹ *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).

held a degree or its equivalent in accounting, and whether the beneficiary achieved recognition of expertise in the specialty 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).

Counsel submits a letter from [REDACTED] one of the beneficiary's employers in the Philippines. This letter states that the beneficiary worked as a bookkeeper for this company from 1988 through 1992. However, this evidence does not establish that the work experience included the theoretical and practical application of specialty knowledge required by managers, that it was gained while working with peers, supervisors, or subordinates who held a degree in management, or that the beneficiary has achieved recognition of expertise.

Counsel also submits a letter from [REDACTED] another of the beneficiary's employers in the Philippines. This letter states that the beneficiary worked as an assistant manager for this company from March 1993 through May 1996. However, this evidence does not establish that the work experience included the theoretical and practical application of specialty knowledge required by managers, that it was gained while working with peers, supervisors, or subordinates who held a degree in management, or that the beneficiary has achieved recognition of expertise.

No other information regarding the beneficiary's previous work experience was submitted. As such, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

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

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

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