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FEB 10 2005

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FILE: LIN 04 275 51922 Office: NEBRASKA SERVICE CENTER Date:

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, Director
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 non-profit organization focused on programs for high-achieving women entrepreneurs. It holds an exclusive agreement to run the Leading Women Entrepreneurs of the World trademarked events. In order to employ the beneficiary as its executive director/project manager, the petitioner 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 two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's denial letter; and (3) the Form I-290B and counsel's brief.

The specialty occupation issue will be addressed first.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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 proffered position. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The director determined that the petitioner had not established that the proffered position meets any criterion set forth at 8 C.F.R. 214.2(h)(4)(iii)(A). The director found that the proposed duties "are a combination of general management, marketing, public relations, and promotional duties" and that the proffered position "is related to the positions of an advertising, marketing, promotional or public relations manager, or an operations manager." (Decision, at page 2.) Quoting from the sections of the 2002-2003 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* that are entitled "Advertising, Marketing, Promotions, Public Relations, and Sales Managers" (at pages 26-28) and "Top Executives" (pages 86-89), the director determined that the *Handbook* "finds no requirement for a baccalaureate degree in a specific field of knowledge for entry into the field[s]" of "advertising, marketing, promotions, public relations, and sales management" or executive positions in "general and operations management." The director concluded:

The proffered position is a generalist position. It does not require a degree in a specific field of study, but rather a general degree in business administration. As a result, the petitioner has not established that the proffered position is a specialty occupation within the meaning of [the] regulations.

The director also cited the precedent decision *Matter of Ling*, 13 I&N Dec. 35 (BIA 1968), for the proposition that a bachelor's degree in business administration without a major in a specific business specialty "does not qualify one for a specialty occupation."

To describe the duties of the proffered position, counsel quotes two sections from the September 10, 2004 letter that the petitioner filed in support of the petition. The first section states that to "[m]anage project budgets, quotes, and contracts" the beneficiary would:

- Be responsible for the financial analysis of projects with budgets ranging between \$250,000 and \$750,000 annually.

- Analyze the projects and determine total costs involved.
- Determine fixed costs and variable costs.
- Prepare project quotes.
- Prepare project budgets for internal use.
- Develop and manage an annual budget for each fiscal year for [the petitioner] and each of the programs and events that the company exclusively handles. The budgets are to include all ongoing expenses not only to run the corporate entity but also for forecasts . . .
- Allocate resources according to the budget.
- Negotiate terms of contracts and rates with all national and international vendors, and prepare progress reports during each project....
- Provide a detailed business plan for future projects' costs and income.

According to counsel's second quotation from the letter, to "[p]lan, track, and manage projects, schedules, and resources" the beneficiary would:

- Define the scope of our projects and prepare project plans to integrate the budget, the costs, and the resources allocated to the project.
- Manage all deliverables and the timing of timelines.
- Allocate the necessary material and financial resources for each project, as discussed below.
- Develop a plan of speakers, suppliers and venues for their services, products or involvement, as well as anything else appropriate to realizing the particular conference, forum or event.
- Negotiate, review and complete all contracts or letters of intent that the group needs in order to conduct business as an organization, while providing additional input to complete terms of contracts as needed.
- Manage staff, including the Marketing Director, IT Director and administrative and customer service staff of eight positions, and develop opportunities that will encourage long-term commitments from them.
- Create and oversee a working timeline that will be followed by everyone in order to maintain dates, timelines and coordination of tasks and deadlines for each event....

- Work with invited CEO honorees from the upcoming countries to be visited in order to begin developing an event program that could be presented and successfully accomplished....
- Develop an agenda for the annual Advisory Board meeting.
- Manage graphic designers and marketing staff to develop the annual program content as well as cards and all other marketing material needed for the honorees, guests, and sponsors for the event.
- Manage other project team members including website professionals for further development of communication with clients and sponsors and business professionals for development of affinity programs that are unique and long-term for the organization.
- Oversee all databases to determine if they are being maintained and coordinate[d] with each other. Develop ongoing strategies for and manage information systems staff to ensure updating and maintenance of such information, with effective communication systems in place for changes, timelines, deadlines and what to do with information as received.
- Obtain and manage current press release information and/or any press identified or developed throughout the year on both the Leading Women as an organization and the individual honorees as leaders....

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, for occupational information relevant to the proffered position and its duties as described in the record, the AAO consulted both the current, 2004-2005 edition of the *Handbook*, and the 2002-2003 edition which the director cited.

Counsel contends that "executive director/project manager" is the only occupational category relevant to the proffered position, and that, because this occupational title is not discussed in the *Handbook*, the director's "reliance on the *Handbook* was misplaced." The AAO disagrees. A petitioner's assignment of a job title that is not included among the occupational titles described in the *Handbook* does not preclude the possibility that the *Handbook* would have information relevant to the underlying duties. The director was correct to concentrate on the proposed duties rather than the job title; and, because, as described in the record of proceeding, those duties involve the executive direction of various projects' advertising, public relations, marketing, promotions, and sales aspects, the director was also correct to consider the educational requirements that the *Handbook* reports for managers in these areas. The director was also correct to consult the *Handbook*'s information on its "top executive" category. As described in the record, some aspects of the petitioner's executive director/project manager position generally comport with top executives as described in the *Handbook*, and general and operations managers, about which the *Handbook* states:

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.

The director correctly assessed that the *Handbook* does not report that a bachelor's degree in a specific specialty is a normal minimum hiring requirement for any of the aforementioned occupations. This fact is relevant, and the director was correct to consider it. It is not dispositive, however, because the proffered position is not identical with any of these occupations. Nevertheless, the duties of the proffered position do not comport with any occupation for which the *Handbook* or other evidence of record indicates that the minimum entry requirement is at least a bachelor's degree, or its equivalent, in a specific specialty.

Counsel asserts that, if the proffered position is a "marketing/advertising/public relations" job, it is a specialty occupation. Counsel states:

Assuming the denial were correct in that this is a marketing/advertising/public relations job, the claim that these are not specialty occupations is absurd. For decades the INS approved H-1 visas for these occupations. See *Matter of [name not provided]*, HHW-N-5225 (AAU Mar. 7, 1985) (Marketing Analyst); *Matter of [name not provided]*, A26-901-109 (AAU Oct. 25, 1985 (Dallas) (Marketing Director); *Matter of [name not provided]*, MEM-N-7652 (AAU Feb 3, 1987) (Memphis SRC) (Marketing Manager – Assistant); *America Bitech, Inc. v. INS*, CIV. No. 2-88-262 (E.D. Tenn. Mar 27, 1989) (Senior Marketing Specialist); *Tapis v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000) (Showroom Manager). Universities throughout the U.S. and the world grant bachelor's degrees to advertising, marketing, and public relations graduates. The INS/CIS did not make a mistake in granting thousands of such petitions.

The decisions cited by counsel are not probative. They deal with marketing analyst, marketing director, marketing manager-assistant, senior marketing specialist, and showroom manager positions that are not congruent with the position in question. They are not based upon the duties of the executive director/project manager position that are the subject of this appeal.

Counsel's assertion that "[for] decades the INS has approved H-1 visas for these occupations" is not persuasive. The AAO is not bound by a decision of a service center or district director. *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). Furthermore, each nonimmigrant petition is a separate proceeding with a separate record, see 8 C.F.R. § 103.8(d), and 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). Moreover, while 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Further, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Counsel (brief at page 10) appears to maintain the position that courts have decided, and that CIS has conceded, that the occupations that the *Handbook* classifies as “top executives,” such as operations manager, are specialty occupations:

The denial also says the position may be related to an “operations manager.” The [*Handbook*] includes this occupation under top executives, from which section the denial quotes. The denial states top executive positions do not require a single degree and thus are not specialty occupations. This point was specifically litigated in *Hong Kong T.V.* and its progeny [footnote deleted], and the INS and CIS since the 1980s have conceded these positions are professional specialty occupations.

Counsel is incorrect to suggest that top executive positions have been recognized as a class of specialty occupation. Counsel cites no authority for his assertion that “INS and CIS have conceded [top executive] positions are professional specialty occupations.” Neither the legacy Immigration and Naturalization Service (INS) nor its successor, CIS, has issued a precedent decision recognizing top executive positions as a class of specialty occupation. CIS decisions on management positions are determined on a case by case basis, with a concentration on the specific tasks involved, not the job title. Relevant information from the *Handbook* is routinely accorded authoritative weight, and, as indicated in the director’s decision and earlier here, the *Handbook*’s information about the varied spectrum of top executives’ educational credentials is inconsistent with counsel’s apparent position that top executive positions have been recognized as a class of “professional specialty occupations.” The AAO follows the clear language of 8 C.F.R. § 214.2(h)(4)(iii)(A), and if none of the four criteria are met, the position does not qualify as a specialty occupation. As the *Handbook* indicates that top executives have a wide variety of educational backgrounds, the position does not satisfy the first criterion.

Counsel cites *Hong Kong T.V. Video Program, Inc. v. Ilchert*, 685 F. Supp. 712 (N.D. Cal. 1988), and its progeny - *American Bitech Inc., et al v. INS*, Civ. No. 2-88-262 (E.D. Tenn. Mar. 27, 1989) and *Augat v. Tabor*, 719 F. Supp. 1158 (D. Mass. 1989) – for the proposition that a position can qualify as a specialty occupation if the position does not require a degree in a specific specialty or its equivalent. The discussion in these cases focused on the definition of professional within section 101(a)(32) of the Act, which does not reference a degree requirement. At that time, membership in a profession was sufficient to qualify a person to serve in a temporary nonimmigrant visa category. The H-1B specialty occupation statute, which was enacted in 1990, now specifically requires the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1).

The petitioner submits an expert opinion, the “Professional Position Evaluation/Evaluation of Education, Training, and Experience” by a professor of marketing who is the graduate program chair in marketing at a U.S. university (hereinafter, the professor’s evaluation). The professor’s evaluation does not establish that the proffered position is a specialty occupation.

The AAO does not assign expert weight to the professor’s conclusion that the proffered position is a specialty occupation. The record does not establish the professor as an expert on the requirements for qualifying a position as a specialty occupation. There is no evidence that the professor has specialized knowledge of the relevant statutes, regulations, case law, and precedent decisions, or that he has been recognized as an authority in this area. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

While the AAO will not accept the professor as an expert on the requirements of a specialty occupation, it does recognize him as an expert on the educational requirements for executive director/project managers of non-profit organizations. By virtue of the professor's expert status in this area, the petitioner established that employers of executive director/project managers of non-profit organizations normally require a bachelor's degree in "business administration, business management, or a related field." For two reasons this expert opinion falls short of qualifying the proffered position as a specialty occupation.

The professor indicated that a bachelor's degree in business administration (BBA) with no concentration in a business specialty would be adequate preparation for the proffered position. However, a longstanding precedent decision indicates that a BBA is not a degree in a specific specialty as required by section 214(i)(1) of the Act and the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Noting that to qualify a position as professional, a petitioner must demonstrate that it requires a precise and specific course of study that relates directly and closely to the position in question, *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988), states that a requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish a position as a profession as defined at section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), and, therefore, does not make an alien with such degree classifiable as an alien of distinguished merit and ability pursuant to section 101(a)(15)(H)(i) of the Act, U.S.C. § 1101(a)(15)(H)(i).¹

Counsel (brief, at page 8) cites to *Hong Kong T.V. Video*, 685 F. Supp. 712, 717, for the proposition, that, in counsel's words, "[t]he uncontradicted testimony of a qualified expert must be accepted." The court did not state this proposition anywhere in its decision, and it is not the holding of the case. Part of the court's decision upheld an expert opinion by a person whose qualifications had not been questioned by the INS and against which the INS had presented no contradictory evidence. The court, however, did not declare that, in the absence of contradictory evidence, the INS must accept a qualified expert's opinion regardless of its content. In fact, in finding against INS, the court reviewed the *content* of the expert opinion and the INS' evaluation of it, and then found that the INS had not accorded it appropriate weight. If the principle enunciated by counsel in fact existed, CIS would be bound to accept the conclusions of an expert opinion regardless of internal deficiencies in the opinion, such as inadequate or inconsistent information about its factual basis. Counsel's rule would create an evidentiary presumption of reliability of all expert opinions regardless of their content, and would thereby impermissibly shift the statutory burden of proof at section 291 of the Act, 8 U.S.C. § 1361, from the petitioner to CIS.

Counsel suggests that the position is a specialty occupation because the record establishes that the position requires substantial management of professionals. Counsel states:

The position of Executive Director/Project Manager [in the petitioner's corporation] involves management of professionals including the IT director and the Marketing Director. The court in *Hong Kong T.V.* noted that one of the factors showing a corporate president is a professional occupation is that he oversees other professionals.

Counsel's statement that the position "involves the management of professionals" is unsupported by the record. Further, the duties of employees whom the beneficiary is to manage are described in terms that are

¹ As noted earlier, the director cited *Matter of Ling*, 13 I&N Dec. 35 (BIA 1968), an earlier precedent decision, as support for the proposition that a requirement for bachelor's degree in business administration without a major in a specific business specialty does not establish a specialty occupation.

too generalized to substantiate where they stand in an employee hierarchy and do not indicate that the subordinates have degrees in a specific specialty. The September 10, 2004 letter of support describes the beneficiary's management of employees in abstract terms (management of "staff, including the Marketing Director, IT Director, and administrative and customer service staff of eight positions"; "[w]ork with managers and staff" at event locations; "direct[ion of] marketing and administrative staff in the review of pending honoree nominations"; "[m]anagement of graphic designers and marketing staff"; and "[d]evelop[ment] of ongoing strategies for and manage[ment] of information systems staff.") The record contains no information about these employees' qualifications. There is no meaningful description of their specific duties. The record therefore does not substantiate the assertion that the beneficiary will be managing "professionals." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaiqbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, the management of professionals is not necessarily an indication of a specialty occupation position. This fact is reflected in the statement at the 2004-2005 edition of the *Handbook* (at page 50) that "many managers have a bachelor's degree in liberal arts or business administration." A precedent decision, *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988), expressly stated that general manager positions are normally not considered to be professional endeavors requiring specific academic degrees.

Counsel asserts that the DOL's *Dictionary of Occupational Titles (DOT)* "confirms that the position is a specialty occupation."² The *DOT* has little relevance for specialty occupation determinations. In contrast to the *Handbook*, it does not identify particular degrees that employers require for specific occupations. The worker function and SVP (Specific Vocational Preparation) ratings do not establish whether a position requires the minimum of a bachelor's degree, or its equivalent, in a specific specialty.

Counsel correctly states an occupation with an SVP rating of 8 "requires specific vocational objective work experience and/or education of over four years[,] up to and including ten years." (Brief, at page 9.) However, this rating does not establish that the proffered position is a specialty occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

The petitioner, thus, has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), as the evidence of record does not establish that the proffered position is one with a normal minimum entry requirement of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence does not satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This criterion is met by showing a specific-specialty degree requirement that is common to the petitioner's industry in positions that are both (1) parallel to the one proffered here and (2) located among organizations similar to the petitioner.

² References in this decision are to the *DOT (4th Ed., Rev. 1991)*, which is available on the Internet at <http://www.oalj.dol.gov/libdot.htm>.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed earlier, the evidence does not establish the proffered position is one for which the *Handbook* reports a degree requirement in a specific specialty. Also, there are no submissions of record from professional associations, individuals, or firms in the petitioner's industry.

On the basis of his qualifications related in the record, the AAO recognizes the professor as an expert on the standard practices followed by private, nonprofit organizations in hiring their executive directors. Accordingly, the professor's evaluation has established that the industry-wide standard is to hire persons with bachelor's degrees in "business administration, business management, and related fields." See page 3 of the professor's evaluation. However, as earlier noted, a business administration degree with no specific concentration does not offer a precise and specific course of study and cannot establish a position as a specialty occupation. Therefore, because the hiring standard requires only a degree of generalized title, it does not satisfy this criterion's requirement.

Next, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2). Under this criterion, 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. The generalized evidence that the petitioner presented about the duties of the proffered position does not focus on or establish the proffered position as more complex or unique than other management positions not requiring a degree in a specific specialty.

Next, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that is, a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty. There is no evidence in the record about the petitioner's hiring history for this position.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4), which is for positions with specific duties that are so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The proposed duties can be characterized as complex because of the variety of areas with which they deal (such as budgeting, contract negotiations, staff management, event planning, and management of press releases). The petitioner, however, did not establish that these duties are so complex and specialized as to be usually associated with a baccalaureate or higher degree in a specific specialty. The evidence of record does not establish the degree of the complexity or the level of specialization. The duties are described in terms too generic and abstract. The record describes no specific elements of the processes involved in any of the areas identified as the executive director/project manager's responsibilities, including, to name a few, financial analysis, project analysis, cost determinations, budget preparation, and management of staff and the project team.

Because the petitioner has not satisfied any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision to deny the petition for failure to establish a specialty occupation was correct, and shall not be disturbed.

The issue of the beneficiary's qualification to serve in a specialty occupation will now be addressed.

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, 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.

With regard to equating the beneficiary's education, training, and/or experience to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D), states:

Equivalence to completion of a college degree. For purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be 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. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. 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 occupation;
 - (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 beneficiary has neither a college degree nor college-level courses, and the record does not indicate that she underwent any specialized training in a specific specialty. The aforementioned professor, however, evaluated the beneficiary's work experience and concluded that she has the equivalent of a U.S. bachelor's degree in business with a concentration in business management. The petitioner submits the professor's

evaluation as provided by 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" in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

Counsel asserts that the director erred (1) by requiring that, to be creditable towards U.S. baccalaureate-degree equivalency, a beneficiary's experience must be obtained in a specialty occupation position (brief, at pages 2-4); and (2) by discounting the beneficiary's work experience as equivalent to a U.S. bachelor's degree in business administration with a concentration in management (brief, at pages 4-6). As part of the latter assignment of error, counsel also contends that the denial "states no basis for dismissing [the] expert's testimony," (brief, at page 5) and that a director should accept an educational evaluation of the beneficiary's experience when it is rendered by a person who is qualified under CIS regulations to render such an opinion (brief, at pages 4-6).

The AAO agrees with counsel that the director erred to the extent that he suggested that all of a beneficiary's work experience must be in specialty occupation positions. Nevertheless, the director rightly judged the evidence of record about the beneficiary's work experience to be inadequate. As discussed below, this evidence, primarily in submissions from three former employers, is uninformative about the beneficiary's application of specialized knowledge in business management or any other specific specialty related to the proffered position.

As the director correctly noted, the letter from the "Australian Institute of Management" acknowledging the beneficiary's membership is not indicative of any particular educational attainment or professional recognition.

The affidavit from the director of the radio station Coromandel FM describing the beneficiary's employment as Project Manager/Editor from June 15, 1992 to February 24, 1995, speaks in general terms about the beneficiary's responsibility for the "development and management of the news role" and development of the station's "business parameters for writing and broadcasting local news, setting the standards which have been maintained by the company." The letter references the beneficiary's successful coordination with various organizations for the development of news source material, her relationship-building strength, and her development and management of a pilot weekly talkback program. There is no information about any tasks requiring the application of specialized knowledge in business management or any other field.

The affidavit from the Managing Director of Pegasus Finance and Land attests to the beneficiary's working for a real estate and resort management firm from March 13, 1995 to May 16, 1997. The affidavit divides the beneficiary's employment into two periods – Assistant in Retail Marketing, followed by promotion to Resort Manager at a beach resort. The only information provided about the first period - that it "included supervising a staff of telemarketers" – conveys no evidence of the application of specialized business management knowledge.

According to the affidavit, during the resort manager period the beneficiary was responsible for the "day to day running" of 35 self-contained beach front units, two swimming pools, a tennis court, and a restaurant. The affidavit also states that the beneficiary had "20 staff under her direction along with fiscal responsibility to the developer and individual owners," and that she "also was responsible for the on site management of an additional 30 beach rental-homes." The affidavit attributes to the beneficiary "management" of personnel, financial matters, marketing, the resort's restaurant and kitchen staff, and all staff from grounds men to room service. The only details given about the beneficiary's management performance requirements are that she

“was given budgetary guidelines and policies to follow for budgetary management authority” and that she had the authority to recommend hiring or firing. The affidavit indicates that the beneficiary had supervisors, but there is no description of who they were or the extent to which the beneficiary’s activities were supervised. The affidavit also credits the beneficiary with “direct marketing solutions to increase marketing,” but there is no evidence that this involved the application of specialized business management knowledge. Likewise, no details are given about any specialized knowledge that the beneficiary may have applied in managing the resort’s First Wedding Expo. In short, the affiant has not established the extent to which any of the beneficiary’s resort manager work involved the application of specialized knowledge in business management or any other specialty.

As the Pegasus Finance and Land affidavit did not state how long the beneficiary worked in either of the two positions, the petitioner has not established that the beneficiary spent substantial time in the promoted Resort Manager position. As the total number of years of qualifying employment is 12, this omission is critical. As minimally described in the record, the beneficiary’s experience as a retail marketing assistant does not meaningfully convey college degree equivalency in business management.

The letter from Ann Mary Garms verifies two periods of the beneficiary’s employment: from May 19, 1997 to May 13, 1999 at The Tivoli Theatre/Cabaret & Bar; and from May 14, 1999 to June 3, 2004, at Ann Garms Gifts and Ann Garms Emporio.

The section on The Tivoli period states these generalized duties that convey little about the specific knowledge and competencies that the beneficiary had to apply:

- Securing and negotiating live performance and show promoters['] contracts and season bookings
- Performance scheduling
- Annual budgets for show production and individual production budgets
- Liaison with international and interstate show producers
- Financial contracts and budgets with international and individual production budgets
- Theatre booking schedules
- Supervision of up to forty (40) theatre and restaurant employees
- Front Office Systems control, ticket sales management and staff training and development
- Human Relations (HR)

██████████ as not established that the beneficiary used specialized business management knowledge during the beneficiary’s employment at The Tivoli Theater/Cabaret and Bar.

The letter states that the beneficiary's period as Personal Assistant and Executive Manager at [REDACTED] Gifts and [REDACTED] Emporio utilized her "hospitality, event management and marketing experience." However, the letter identifies no specialized knowledge that the beneficiary used in the performance of her duties. The letter indicates that she managed staff, but provides no details other than that she was responsible for "the hire and training of wait staff, kitchen staff, building contractors, and administrative personnel." The only details provided about the "[m]anagement of external business matters" is the statement that it included liquor licensing and the implementation of fire safety, liquor, and food preparation regulations. Likewise, the letter provides no information about specialized business management knowledge involved in either the beneficiary's "[s]uccessfully negotiating contracts and multi-million dollar building purchases with the vendors and solicitors," or her "[a]cting as "a liaison with [the] Harvard Woman's Leadership Board." "Managing all day to day accounting for the business and handling quarterly BAS statements for Australian Taxation" provides no insight into what this activity involved. The same is true for the statement "Managing all marketing, branding, and communication activities." It is not evident how "establishing" one of the author's stores and "overseeing all aspects" of that endeavor and "[e]stablishing a database of suppliers" involved highly specialized knowledge of any specialty. Finally, that the beneficiary completed "professional training from the house of Versace and Waterford Wedgwood in the areas of fine fragrance, make-up and skin care and fine crystal" communicates nothing about her obtaining specialized knowledge in business management or any other specific specialty.

The portion [REDACTED] letter that deals with the beneficiary's organizing the 2004 Leading Women Entrepreneur's of the World™ event does not indicate that the beneficiary used highly specialized knowledge equivalent to college-level coursework in business management. Duties such as "[s]uccessfully organizing" the event; "[o]verseeing" the celebratory events "with a hands-on approach"; "managing the Leading Women Entrepreneur's of the World™ in every aspect of operation"; [o]rganizing speakers"; "[m]anaging sponsorships and sponsors of the events"; arranging welcome letters; producing a document about sponsorship opportunities; providing daily progress updates to the chairperson and owner, and working with another chairperson on an upcoming event do not indicate that the beneficiary's work included the theoretical and practical application of highly specialized knowledge required by the specialty.

[REDACTED] also stated that the beneficiary "managed liaison work for not[-]for[-]profit organizations, Colleges of Advanced Education and Universities"; "worked with me to prepare for speaking engagements, including conducting extensive research and preparing speeches"; and had "direct contact with [u]niversity fellows including Professors, Doctors, Institute Directors, Associate Directors and MBA Managers who held degrees or equivalent work experience in business management or closely related fields." These statements are too generalized to have any evidentiary significance.

Only the affidavit from Pegasus Finance and Land asserts that the beneficiary worked with peers, subordinates, or supervisors who held degrees that may be relevant to a business management specialty. It states (at page 2):

[The beneficiary] was in charge of co-workers and worked with supervisors who held degrees or equivalent work experience in business management, hotel and restaurant management, or closely related fields.

The assertion is insignificant: as noted by the director, the employer supplied no documentation to support it.

Contrary to counsel's view, the director was correct in discounting the former employers' evidence about the beneficiary's work experience. The work descriptions do not demonstrate that the beneficiary's work experience involved the application of highly specialized knowledge in business management that is the equivalent of at least a baccalaureate degree in that area.

Counsel is incorrect in contending that CIS must accept, adopt, or defer to the conclusions of professors providing work-experience evaluations under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), regardless of the content of the evaluation narrative and the quality of the evidence upon which the evaluator depended. CIS has the obligation to gauge the accuracy, reliability, and adequacy of the factual foundation of such conclusions, on the basis of the information from which they were developed.

In this proceeding, the evaluating professor has provided an inadequate factual foundation to support his conclusion about the U.S. degree-equivalence of the beneficiary's work experience. The professor states: "My analysis of [the beneficiary's] employment experience is based on affidavits and letters of evidence from her employers." (Evaluation, at page 4.) The professor's summary of the beneficiary's particular work experience (evaluation, at pages 4, 5) indicates that he evaluated the same work-experience documents that were submitted into the record. As discussed earlier, these documents do not (1) convey substantive information about the specialized knowledge that the beneficiary employed in the jobs evaluated by the professor, or (2) establish the educational background of those with whom the beneficiary worked. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). As the professor's statements about the course-equivalency of the beneficiary's work experience, about the degrees held by persons with whom the beneficiary worked, and, ultimately, about the degree-equivalency of the beneficiary's experience are unsubstantiated, his evaluation has not established that the beneficiary has attained the equivalent of a baccalaureate degree in business administration with a concentration in business management.

The AAO also notes that the petitioner has submitted no independent evidence to establish that the beneficiary has achieved the recognition of expertise that the Act requires for the qualification of a beneficiary to serve in a specialty occupation. Section 214(i)(2)(C) of the Act, 8 U.S.C. § 1184(i)(2)(C), states that, in the absence of a required degree, the petitioner must demonstrate not only that the alien has experience in the specialty equivalent to the completion of such degree, but also that he or she has achieved recognition of expertise in the specialty through progressively responsible positions relating to the specialty. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) requires that the non-degree alien:

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.* [Italics added.]

The petitioner and the Pace University professor present no independent evidence to substantiate that the beneficiary's employment history shows progressively responsible positions that are directly related to the business management specialty. As indicated in the earlier discussion of the submissions from the former employers, the evidence of record does not establish that any of the beneficiary's positions required theoretical and practical application of a body of highly specialized knowledge directly related to the relevant specialty. In addition, the evidence does not establish a progression in responsibility directly related to the specialty. For this additional reason, the petitioner has failed to establish that the beneficiary is qualified to serve in a specialty occupation.

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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.