

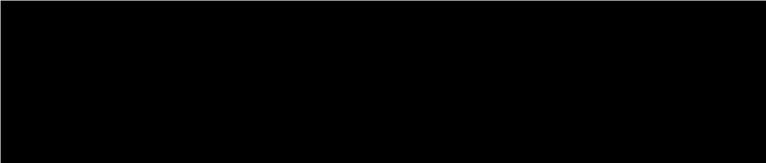
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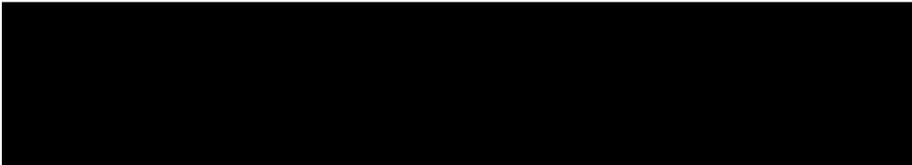
FILE: WAC 03 228 54533 Office: CALIFORNIA SERVICE CENTER Date: **JAN 11 2007**

IN RE: Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in blue ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The petitioner filed an appeal, which was denied by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted. The petition will be denied.

The petitioner is a dental practice. It seeks to employ the beneficiary as a management analyst and to classify her as a nonimmigrant worker in a specialty occupation 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).

The director denied the petition on the ground that the record failed to establish that the proffered position qualifies as a specialty occupation. The AAO denied the appeal on the same ground. Beyond the decision of the director, the AAO also determined that the beneficiary is not qualified to perform services in the specialty occupation of management analyst.

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.

As provided in 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 proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; (5) Form I-290B, an appeal brief, and supporting materials; (6) the AAO's decision; and (7) the motion to reopen and supporting materials. The AAO reviewed the record in its entirety before issuing the instant decision.

In the Form I-129 the petitioner described itself as a dental practice established in 2000 with 14 employees and gross annual revenues of \$895,715. The petitioner stated that it sought to hire the beneficiary as a management analyst for three years at the wage rate of \$8.00/hour.<sup>1</sup> In a letter accompanying the petition, with a letterhead identifying the petitioner as a dental practice in periodontics and dental implants, the petitioner indicated that it was experiencing rapid growth and needed the services of a management analyst to analyze the clinic's operations and methodologies and determine how to make the business more efficient and competitive. The duties of the proffered position, and the percentage of the beneficiary's time they would require, were listed as follows:

**Provide Consultation and Advice to Management and Staff (20%)**

The management analyst will participate in top-level management discussions to identify business problems and solutions. She will work closely with the management team to continuously improve the thinking, analysis, and direction of our corporate strategies. She will collaborate with members of the management and partners to plan the growth of the business. She will assist in the preparation of the annual budget by obtaining, compiling, evaluating data and monitoring expenditures.

**Obtain Information Needed to Do the Job (10%)**

The management analyst will gather the necessary information to develop solutions to address our business problems. She will study our existing operation and administrative systems to identify areas that require enhancement or modification. She will also research the operations and administrative processes employed by other dental clinics to enable her to perform a comparative analysis of the different methods employed in the industry. She will constantly review industry standard developments and attend relevant meetings, courses and conferences regarding features, directions, protocols, etc. related to the industry.

**Analyze Data or Information (10%)**

The management analyst will take responsibility for confronting the most advanced and difficult problems facing our organization, including understanding specific competitor performance, assessing underlying market dynamics and dissecting the drivers of, and potential for, financial returns. She will contribute to all phases of client engagements, including strategic financial and organizational analysis. She will create justification that

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<sup>1</sup> This figure extrapolates to \$320.00 for a full-time, 40-hour work week, or an annual salary of \$16,640.00/year, which is far less than the prevailing wage for management analysts in the Los Angeles, California metropolitan area. The Occupational Employment Statistics of the Department of Labor's Bureau of Labor Statistics indicates that the hourly mean wage for management analysts in the Los Angeles / Long Beach, California area as of May 2003 was \$43.28/hour, and the mean annual salary in that area was \$90,030. See [http://www.bls.gov/oes/2003/May/oes\\_4480.htm#b15-000](http://www.bls.gov/oes/2003/May/oes_4480.htm#b15-000). This low level of compensation raises questions about whether the beneficiary would actually be performing the tasks of a management analyst in the proffered position.

supports management decisions through return-on-investment and financial statements analysis.

**Develop and Implement Solutions (25%)**

Based on in-depth analysis of data, the management analyst can subsequently present proposals and recommendations of the most appropriate procedures our clinic should utilize in our operations. She will propose ways to improve or change organization structure, wage administration, and work schedules. She will develop and present strategies and proposals to executive leadership advocating the right set of actions to implement from the proposed strategies. She will structure and lead the work of a strategy team and manage its performance. Furthermore, she will create and promote relationships with key business associates that foster long-term and mutually beneficial relationships.

**Communicate with Other Workers (5%)**

The management analyst will confer with personnel concerned to ensure successful functioning of newly implemented systems or procedures. She will be required to create the necessary consensus within the organization to achieve results. She will train workers in the use of new forms, reports, procedures, or equipment according to organizational policy.

**Quality and Performance Audit (25%)**

Evaluate overall system of care, continuous assessment of treatment program outcomes, and provide recommendation for action and/or systematic or procedural revisions where standards are not met. Responsible for development of performance indicators, outcome measures and appropriate methods of evaluating achievements. Analyze and evaluate quality of care data and participate in regular utilization review activities with other designated professionals to provide recommendations for corrective and/or improved actions. Facilitate and monitor problem resolutions. Assist in maintaining clinic conformity to laws, rules and regulations of federal, state, and professional regulatory groups for accreditation and certification as a provider for third party payments. Recommend revision of clinic's forms and clarification of criteria used in patient diagnosis and treatment. Develop chart audit program to monitor compliance with all federal, state, and corporate guidelines as well as delivery of high standards of care. She will be responsible for interpreting data from the audits, identifying problems and recommending resolution of findings.

**Other Duties (5%)**

The management analyst will conduct organizational, administrative, fiscal and personnel studies, carry out surveys, and collect information on operational and administrative problems. This includes competitive intelligence gathering and market/industry analysis. She will coordinate and participate in special projects; compile and prepare reports, memoranda, policies, and manuals; prepare tables, charts, and graphs to illustrate distribution and trends of financial data.

The beneficiary is qualified for the job, the petitioner declared, by virtue of her bachelor of science degree in biology from the Far Eastern University in Manila, the Philippines, awarded on March 24, 1990, along with eight years of work experience in the field of management. According to an evaluation by [REDACTED] a marketing professor at Pace University in New York, the beneficiary's academic credentials and work experience are equivalent to a bachelor of business administration with a concentration in management from an accredited college or university in the United States.

In response to the RFE the petitioner submitted a website printout from a company that provides business consulting services to private dental practices; two internet job announcements for dental office managers requiring a baccalaureate degree in the field of business, health, or hotel management; website information from three dental offices identifying their personnel; an organizational chart identifying the proffered position as directly subordinate to the president; a list of employees with brief job descriptions; an assortment of tax filings and employee pay records; and other documentation.

In his decision the director noted that the website information on other dental offices did not identify any management analysts in their employ and found that the position in those businesses most similar to the proffered position in this case is office manager. The director determined that the evidence of record did not demonstrate that businesses similar to the petitioner's require the services of a management analyst. The director also determined that the petitioner failed to show that he had unique and specific needs for the services of a management analyst for the period of requested H-1B classification. The director concluded that the record failed to establish that there is a bona fide position which qualifies as a specialty occupation.

On appeal the petitioner contested the grounds for the director's denial and submitted a copy of a letter from another dental practice in Long Beach, California, which states that it is experiencing rapid growth and needs to hire an individual with a bachelor's degree or the equivalent and management expertise to help the business "address the additional services we need [and] maintain the quality of service we provide."

In its decision the AAO determined that the proffered position does not qualify as a specialty occupation under any of the alternative criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The record did not establish that the duties of the position rise to the level of a management analyst, the AAO stated, because the job duties described by the petitioner lack specificity, the petitioner failed to show how the duties relate specifically to its business operations, and the evidence did not indicate that the petitioner's business was complex enough to require the services of a management analyst. The AAO concluded that the evidence of record did not establish that a baccalaureate or higher degree in a specific specialty is required for entry into the position. The documentation of record did not indicate that other dental practices employ management analysts in ongoing positions, the AAO stated, or that the duties of the proffered position are so specialized and complex that baccalaureate level knowledge in a specific specialty is required to perform them. Beyond the decision of the director, the AAO also determined that the beneficiary is not qualified to perform services in the specialty occupation of management analyst. The AAO referred to information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* stating that employers in private industry generally seek management analysts with master's degrees in business administration or a related discipline, whereas the beneficiary in this case only has a baccalaureate level education.

In the motion to reopen counsel asserts that the proffered position qualifies as a specialty occupation under the first and fourth alternative criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (4), and that the beneficiary qualifies to perform the services of the occupation because a baccalaureate level of education is

sufficient for an entry-level job as a management analyst. In support of the motion counsel submits a supplemental letter from the petitioner providing further details about the duties of the proffered position and explaining why the services of a management analyst are needed in the business. Counsel also submits three opinion letters from university professors at UCLA, Portland State University, and Seattle Pacific University who declare that the duties of the proffered position are those of a management analyst and that a baccalaureate or higher degree is required for the position. The AAO determines that the petitioner has established proper cause to reopen the proceeding, in accordance with 8 C.F.R. § 103.5(a)(1). Based on the evidence of record, however, the AAO again determines that the petitioner has not met the requirements for approval of the petition.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The petitioner claims that the duties of the proffered position are those of a management analyst. That occupation is described as follows in the DOL *Handbook*, 2006-07 edition, at 92-93:

Management analysts, often referred to as *management consultants* in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company that needs help improving the system of control over inventories and expenses may decide to employ a consultant who is an expert in just-in-time inventory management. In another case, a large company that has recently acquired a new division may hire management analysts to help reorganize the corporate structure and eliminate duplicate or nonessential jobs. In recent years, information technology and electronic commerce have provided new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace.

[S]ome analysts and consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business functions, such as human resources, marketing, logistics, or information systems . . . . Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the organization's managers. In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers . . . .

Both public and private organizations use consultants for a variety of reasons. Some lack the internal resources needed to handle a project, while others need a consultant's expertise to determine what resources will be required and what problems may be encountered if they pursue a particular opportunity . . . .

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem. During this phase, they analyze relevant data – which may include annual revenues, employment, or expenditures – and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem . . . tak[ing] into account the nature of the organization, the relationship it has with others in the industry, and its internal organization and culture. Insight into the problem often is gained by building and solving mathematical models.

Once they have decided on a course of action, consultants report their findings and recommendations to the client . . . . For some projects, management analysts are retained to help implement the suggestions they have made.

With respect to the educational requirements of management analysts, the *Handbook* states as follows:

Educational requirements for entry-level jobs in this field vary widely between private industry and government. Most employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field or industry in which the worker plans to consult . . . . Some will hire workers with a bachelor's degree as a research analyst or associate . . . . Most government agencies hire people with a bachelor's degree and no pertinent work experience for entry-level management analyst positions.

Few universities or colleges offer formal programs of study in management consulting; however, many fields of study provide a suitable educational background for this occupation because of the wide range of areas addressed by management analysts. Common educational backgrounds include most academic programs in business and management, such as accounting and marketing, as well as economics, computer and information sciences, and engineering . . . .

*Id.* at 93-94. The foregoing information indicates that a baccalaureate level of education in business, management, accounting, marketing, economics, computer and information sciences, engineering, or other business and management specialties may be sufficient for entry into the occupation. The AAO determines that the position of management analyst generally qualifies as a specialty occupation.

In the letter submitted in support of the motion, the petitioner states that he has taken over the periodontal practice of three dentists who recently died or retired and lacks the management experience to merge the practice properly, to manage it efficiently, and to maximize its operational functions while minimizing overhead. According to the petitioner, he needs the services of a management analyst to reorganize his practice, advise him on dental and electronic support equipment, collect and analyze marketing and business data to determine appropriate personnel levels and costs, project future geographical expansion with a view toward opening two additional clinics in Valencia and Thousand Oaks, and oversee the implementation of these plans. In addition to opening two new clinics, the petitioner explains, he also plans to broaden his practice from periodontics into a multi-specialty practice that includes orthodontics, children's dentistry, and endodontistry.

The petitioner's letter is not supported by any documentary evidence of his takeover of three additional periodontal practices, the scale of those practices, the number of employees and patients he acquired, or any other business data relating to the operational aspects of those practices, and does not describe the complexities of the duties to be performed with relation to the acquisitions. He does not describe or document different billing systems, personnel policies, assets and liabilities, or give any detail about what the management analyst will do in transitioning from the three offices to the new business. While the petitioner's letter on motion states why he would like to hire a management analyst, he again fails to describe with specificity the duties to be performed in relation to the dental practice. The petitioner states that he wants to create efficiencies with personnel and equipment and needs market and demographic advice for the desired expansion, but does not delineate the specific duties to be performed on a daily basis in relation to the dental practice. Nor is the letter supported by documentary evidence of the petitioner's plans for geographical expansion and a broader practice. Going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See 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)). Thus, the record lacks the evidence necessary for the AAO to determine whether the job duties the beneficiary would be performing, described by the petitioner in its initial letter to the service center and in the instant motion, rise to the level of a management analyst as described in the DOL *Handbook*, and whether the job duties require a baccalaureate or higher degree in a specific specialty. In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are crucial, not the title of the position. The petitioner must show that the performance demands of the position require a specialty degree. The critical issue is not the employer's self-imposed standard, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in the specific specialty as a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000). The AAO concludes that the petitioner's letter in support of the instant motion fails to establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the proffered position, as required for it to meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Three opinion letters have been submitted with the instant motion. One is from [REDACTED], at UCLA School of Dentistry, who indicates that he has been a licensed dentist for 40 years and continues to work as a part-time dentist and as an instructor at the Dental School. Based on his experience in the profession [REDACTED] states that it is common for dentists seeking to expand their practice to hire an in-house management analyst with a baccalaureate degree in an area such as business administration, accounting, finance, or economics, who will counsel the dentist on such matters as the purchase of state-of-the-art dental equipment and the hiring of personnel, and also perform market research and analysis, demographic surveys, and business and accounting calculations. [REDACTED] analysis is general in nature and does not address the petitioner's particular business situation. His letter does not indicate that he reviewed the duties of the proffered position. Nor does he cite industry surveys or other trade data or provide any examples of dental practices that have hired management analysts, identify any individuals in such positions, or submit evidence of their specialty degrees. Going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici, id.*

The second opinion letter submitted on motion is from [REDACTED], Professor of Management and Information Systems at Seattle Pacific University, who discusses the duties of the proffered position, as described by the petitioner, and concludes that the normal minimum requirement for such a position, and within the industry at large, is a baccalaureate degree in business administration or management or a master's

degree in business administration (MBA). There is no evidence on [REDACTED] curriculum vitae or elsewhere in the record, however, that he has any work or consulting experience in the dental services industry. The record does not reflect that [REDACTED] has any expertise on the hiring criteria of dental practices, particularly with respect to the utilization of management analysts to facilitate a practice's reorganization and/or expansion. Though he asserts that "during periods of growth and expansion, it is common for multi-professional [dental] practices to have a professional management analyst on their staff" with a bachelor's degree in business administration or management or an MBA, [REDACTED] does not cite to industry data or surveys or provide any examples of dental practices that have hired management analysts, identify any individuals in such positions, or submit evidence of their specialty degrees. Going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *Matter of Soffici, id.*

The third opinion letter submitted on motion is from [REDACTED], Associate Dean at Portland State University's School of Business Administration, who discusses the duties of the proffered position and states that within the dental services industry the normal minimum requirement for a management analyst is a baccalaureate degree in business administration. A degree with a generalized title such as business administration, without further evidence of a specific course of study closely related to the proffered position, is not a degree in a specific specialty and would not be sufficient to classify the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1988). There is no evidence in the record that [REDACTED] has any work or consulting experience in the dental services industry. The record does not reflect that [REDACTED] has any expertise on the hiring criteria of dental practices, particularly with respect to management analysts utilized to facilitate a practice's reorganization and/or expansion. [REDACTED] cites no industry data or surveys and provides no examples of dental practices that have hired management analysts, does not identify any individuals in such positions, and does not submit any evidence of their specialty degrees. Going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *Matter of Soffici, id.*

CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion does not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. See *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). The AAO determines that the opinion letters from [REDACTED], [REDACTED], and [REDACTED] are not persuasive evidence that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the proffered position, as required for it to meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), or that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the record show that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The evidence of record does not establish that the beneficiary would be performing the duties of a management analyst in the proffered position, or that the position involves a level of complexity or uniqueness that requires a baccalaureate or higher degree in a specific specialty.

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a

baccalaureate or higher degree in a specific specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties of the proffered position are so specialized and complex that they require knowledge usually associated with a baccalaureate or higher degree in a specific specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Though [REDACTED]'s letter asserts that the duties of the position are so specialized and complex that baccalaureate or higher level knowledge in a specialty is required to perform them, neither the letter of [REDACTED] nor other evidence in the record persuasively demonstrates that the beneficiary would actually be performing the duties of a management analyst. As the record is less than clear as to the specific job duties the beneficiary would perform in relation to the petitioner's business, the petitioner has not shown that the duties are so specialized and complex as to require baccalaureate level knowledge in a specialty. Accordingly, the position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). Accordingly, the petition cannot be approved.

Beyond the decision of the director, the record does not establish that the beneficiary is qualified to perform services of a management analyst. Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (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.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (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.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on 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 [CIS] 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 . . . 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 <sup>2</sup> in the same

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<sup>2</sup> *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

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 does not qualify to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) because she does not have a U.S. baccalaureate or higher degree, or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) because she does not hold a foreign degree determined to be equivalent to a U.S. degree required by the specialty occupation,<sup>3</sup> or under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) because she does not have an unrestricted state license to practice the specialty occupation.

In order for the beneficiary to qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform services in a specialty occupation, the record must establish that she has a combination of education, specialized training and progressively responsible work experience equivalent to a U.S. baccalaureate or higher degree in the specialty occupation, as evidenced by one or more of the documentary forms set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D). The record includes the evaluation of the beneficiary's education, training, and experience by [REDACTED], a marketing professor at Pace University's School of Business, who states that the beneficiary's work experience and training in business administration, management, and related areas is equivalent to a bachelor of business administration with a concentration in management from an accredited college or university in the United States. A letter accompanying the evaluation from the Associate Dean and Director of Graduate Programs at Pace University's School of Business states that Professor [REDACTED] has the authority to grant college-level credit . . . based on the *academic* and professional credentials of candidates" and that "Pace University has a program for granting college-level credit based on a candidate's foreign *educational credentials*, training and/or professional employment experience." (Emphasis added.) The foregoing language does not establish that Professor [REDACTED] has the authority to grant college-level credit, or that Pace University has such a program, based exclusively on training and/or work experience – *i.e.*, without any educational component. Accordingly, the evaluation from Professor [REDACTED] cannot be considered as evidence of the beneficiary's U.S. degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Since the evaluation reviews the beneficiary's work experience, as well as his education, it cannot be considered as evidence of the beneficiary's U.S. degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

Nor does the record establish that the beneficiary has the equivalent of a U.S. degree in business administration, with a concentration in management, through a combination of education, specialized training,

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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).

<sup>3</sup> Dr. Gould's evaluation of the beneficiary's academic credentials, which is part of his overall evaluation of her education, training, and experience, concludes that the beneficiary's foreign degree is equivalent to a bachelor of science in biology from a U.S. college or university, which is not a field of study that is directly related to the occupation of management analyst nor a field of study identified in the *Handbook* as a common educational background for management analysts.

and/or work experience in the specialty occupation or related areas, and recognition of expertise therein, as required to meet the alternative qualifying criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The AAO will accept the beneficiary's first two years of university credit as general coursework preceding the specialization of a degree. Therefore, the petitioner must demonstrate that the beneficiary has six years of progressively responsible experience in management or a related specialty to have the equivalent of a bachelor's degree in the specialty. Though there is documentary evidence of the beneficiary's work experience, the record does not show that any of her experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in a specialty occupation, or that the beneficiary has documented recognition of expertise in the specialty. Without such documentation the beneficiary's work experience cannot be counted for the purpose of determining degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The AAO concludes, therefore, that the evidence of record does not establish that the beneficiary's education, specialized training, and work experience is equivalent to a baccalaureate degree in management or a related specialty from a U.S. college or university.

For the reasons discussed above, the petitioner has failed to establish that the beneficiary is qualified to perform services in a specialty occupation. For this reason as well, the petition may not be approved.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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