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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
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Services**

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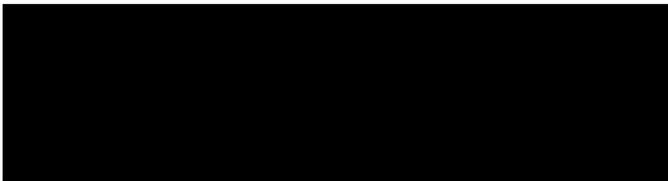


FILE: EAC 08 148 52747 Office: VERMONT SERVICE CENTER Date: **APR 30 2010**

IN RE: Petitioner: 
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Vermont 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 software consulting and development company, which claims to have 40 employees. It seeks to employ the beneficiary as a market research analyst 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 concluding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation.

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 director's RFE; (3) the director's denial letter; and (4) Form I-290B with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The primary issue in this matter is whether the proffered position qualifies as a specialty occupation.

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

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

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

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS 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 petitioner states that it is seeking the beneficiary's services as a market research analyst. In the March 29, 2008 letter of support, the petitioner claimed that the beneficiary's duties would include the following, in pertinent part:

- Analyze product and equipment moves and suggest cost effective and efficient solutions for transport;
- Push project forward from feasibility stage;
- Liaise with local businesses to identify potential new market sectors for products or services and suggest best means of introduction into these sectors;
- Develop communication with freight forwarders, clients and overseas contacts to move cargo around the world;
- Deal with issues relating to documentation, customs, and financial concerns that impact on product and equipment deliveries;
- Manage accounts payable and accounts receivables; and
- Provide effective solutions after studying the freight forwarding process and government regulations controlling movement of products and equipment domestically and internationally.

The petitioner stated its minimum degree requirement for the proffered position is a bachelor's degree or equivalent. The petitioner did not indicate that it requires a bachelor's degree in a specific specialty.

The petitioner also submitted a copy of an offer letter addressed to the beneficiary. The letter, which is dated November 28, 2007, states that the beneficiary will be employed as an administrative/executive assistant at a salary of \$24,000 per year. This offer letter position title and salary conflicts with the Form I-129 and the LCA, which indicate that the beneficiary will be employed as a market research analyst with a salary of \$48,000 per year. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner also submitted the beneficiary's foreign education documents, but did not submit a copy of a credential evaluation.

The director issued an RFE stating that the petitioner did not establish that the beneficiary will be performing services as a market research analyst and requested, in part, a more detailed description of the proffered position, documentation regarding other employees in the same or similar positions, and brief job descriptions for the majority of positions in the petitioner's company. The director also requested evidence demonstrating that the proffered position requires at least a bachelor's degree in a specific specialty.

The petitioner responded that it has no other employees in the proffered position and provided a position description. To summarize, the duties provided in response to the RFE can be broken down as follows:

- Measure and assess customer and employee satisfaction; forecast and track marketing and sales trends; seek and provide information to help companies determine their position in the marketplace; and conduct research on consumer opinions as well as gather and analyze price data (25% of time).
- Analyze product and equipment moves and suggest cost effective and efficient solutions for transport; facilitate cooperation among various players involved in projects; develop communication with freight forwarders, clients, and overseas contacts to move cargo around the world; deal with all issues related to documentation, customs, financial concerns, and manage accounts payable (45% of time).
- Case modeling using UML, business process modeling, data modeling, change management; analyze business requirements; and consult with I.T. delivery and quality control teams to ensure business design as implemented and defined in business requirements (35% of time).

These numbers add up to 105% and therefore the AAO cannot accurately determine the percentage of time the beneficiary would allegedly spend performing each duty.

The petitioner also provided a copy of a new offer letter to the beneficiary, dated March 3, 2008. The second offer letter states that the beneficiary will be employed as a market research analyst at a salary of \$48,500 per year, which conflicts with the information provided in the first offer letter. The petitioner does not explain the discrepancy. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

In its response to the director's request for further evidence, the petitioner expanded the beneficiary's duties, adding items such as: measuring and assessing customer and employee satisfaction; forecasting and tracking marketing and sales trends; seeking and providing information to help companies determine their position in the marketplace; conducting research on consumer opinions as well as gather and analyze price data; case modeling using UML, business process modeling, data modeling, change management; analyze business requirements; and consulting with I.T. delivery and quality control teams to ensure business design as implemented and defined in business requirements, to name a few. As discussed above, the petitioner also provided a new offer letter to the beneficiary, which conflicts with the offer letter previously provided that indicates the petitioner intends to employ the beneficiary as an administrative/executive assistant. In sum, the initial description has the beneficiary primarily involved in shipping and customs administrative duties, while the second iteration of the job has the beneficiary primarily working in sales forecasting and data modeling.

Further, the petitioner also provided copies of the Forms W-2 of other employees and their job titles. Nearly all of the petitioner's employees work in computer professions and, moreover, many of those do not reside near the petitioner's offices, but instead are employed in other U.S. locations.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

On appeal, counsel for the petitioner, as the new attorney of record, filed a brief and additional evidence. Counsel states as follows:

The prior duties aforementioned in the initial request for evidence and denial related to "bookkeeping, shipping, and receiving, accounts payables and receivables etc."; develop communication with freight forwarders [sic], clients and overseas contacts to move cargos around the world; providing effective solutions after studying the freight forwarding process and government regulations controlling the movement of products and equipment domestically and internationally" were clerical errors as the company is not a manufacturer to be delivering cargo around the world. The company is a software development services company.

No evidence was provided by counsel to indicate that the petitioner, a software development services company with an offshore development center in India, would not have any need for bookkeeping, shipping, receiving, and accounts payables and receivables services. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of

counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel further argues that the proffered position is that of a market research analyst and provides a new position description, which includes duties such as: developing detailed marketing strategies; establishing research methodologies, gathering data on competitors; researching and preparing reports; and forecasting future marketing trends. Counsel also breaks these duties down into much smaller percentage increments than the petitioner did in response to the RFE. Like the position description provided in response to the RFE, the position description provided by counsel on appeal, which differs in significant ways from the original job description as well as the position description provided by the petitioner in response to the RFE, may not be considered. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Counsel also provides a credential evaluation on appeal stating that the beneficiary has the equivalent of a bachelor of science in business administration based on a three-year program of study in commerce and four years of employment experience. The experience letters provided for the first time on appeal indicate that the beneficiary's experience includes the following:

[C]oordination of pre-shipment inspections, facilitate cooperation among various players, source rate and routing, successfully deal with all issues related to documentation, customs, financial concerns which potentially impact on product and equipment deliveries[.] Also had the additional responsibility in involving receivables, payables, client invoicing and collections[.] Coordinating with freight forwarders for account receivables and accounts payables.

Therefore, the beneficiary's past experience entails a number of duties that are similar to those described by the petitioner in the initial support letter for the proffered position. That the beneficiary already has this experience further indicates that the initial position description provided by the petitioner in its March 29, 2008 support letter may more accurately describe what the beneficiary will actually be doing.

The AAO therefore will proceed with the analysis of whether the proffered position is a specialty occupation based on the information provided with the initial submission of the petition.

The AAO finds that the petitioner's original description of duties indicates that the proffered position is primarily a hybrid between an expediting clerk and an office clerk as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The initial offer letter stating that the beneficiary will work as an administrative/executive assistant further proves that the proffered position is primarily clerical or administrative in nature.

The position description of expediting clerks in the *Handbook* is as follows:

Expediting clerks contact vendors and shippers to ensure that merchandise, supplies, and equipment are forwarded on the specified shipping dates. They communicate with transportation companies to prevent delays in transit, and they may arrange for the distribution of materials upon their arrival. They may even visit work areas of vendors and shippers to check the status of orders. Expediting clerks locate materials and distribute them to specified production areas. They may inspect products for quality and quantity to ensure their adherence to specifications. They also keep a chronological list of due dates and may move work that does not meet the production schedule to the top of the list.

The 2008-2009 edition of the *Handbook* states that “[m]any production, planning, and expediting jobs are at the entry level and do not require more than a high school diploma.”

The position description of office clerks are as follows, according to the *Handbook*:

Rather than performing a single specialized task, general office clerks have responsibilities that often change daily with the needs of the specific job and the employer. Some clerks spend their days filing or keyboarding. Others enter data at a computer terminal. . . .

The specific duties assigned to a clerk vary significantly, depending on the type of office in which he or she works. . . .

Clerks’ duties also vary by level of experience. Whereas inexperienced employees make photocopies, stuff envelopes, or record inquiries, experienced clerks usually are given additional responsibilities. For example, they may maintain financial or other records, set up spreadsheets, verify statistical reports for accuracy and completeness, handle and adjust customer complaints, work with vendors, make travel arrangements, take inventory of equipment and supplies, answer questions on departmental services and functions, or help prepare invoices or budgetary requests. . . .

The *Handbook* states that for office clerks, “[e]mployers usually require a high school diploma or equivalent, and some require basic computer skills, including familiarity with word processing software, as well as other general office skills.”

Because the *Handbook* indicates that entry into either an expediting or office clerk occupation does not normally require a bachelor’s or higher degree or its equivalent in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation.¹

¹ Even if the AAO were to find that the proffered position is that of a market research analyst as asserted by counsel, the 2010-2011 edition of the *Handbook* does not indicate that entry into positions in that occupation normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. While the *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many market and survey

As the evidence of record does not establish that the particular position here proffered is one 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 petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS 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

research jobs, it does not indicate that the degrees held by such workers must be in a specific specialty that is directly related to market research, as would be required for the occupational category to be recognized as a specialty occupation. This is evident in the range of qualifying degrees indicated in the Significant Points section that introduces the *Handbook's* chapter "Market and Survey Researchers," which states: "Market and survey researchers can enter the occupation with a bachelor's degree, but those with a master's or Ph.D. in marketing or a social science should enjoy the best opportunities."

That the *Handbook* does not indicate that market research analyst positions normally require at least a bachelor's degree in a specific specialty is also evident in the following discussion in the "Training, Other Qualifications, and Advancement" section of its chapter "Market and Survey Researchers," which does not specify a particular major or academic concentration:

A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree is usually required for more technical positions.

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take social science courses, including economics, psychology, and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines.

Because the *Handbook* indicates that entry into the market research analyst occupation does not normally require a degree in a specific specialty, the *Handbook* does not support the position of market research analyst as being a specialty occupation.

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)).

The petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The petitioner provides no expert opinions, letters, or other evidence indicating that similar employers require at least a bachelor's degree in a specific specialty for the proffered position.

The petitioner has also not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “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 petitioner and counsel did not submit any copies of advertisements or other documentation to evidence that the proffered position requires a degree in a specific specialty. Moreover, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than market research analyst positions that can be performed by persons without a specialty degree or its equivalent.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties 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 have not been described with sufficient specificity to show that they are more specialized and complex than expediting or office clerk positions that are not usually associated with a degree in a specific specialty.

Therefore, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Beyond the decision of the director, the AAO finds that the petitioner did not submit sufficient documentation to show that the beneficiary qualifies to perform services in any specialty occupation requiring a degree in business administration or a related field under 8 C.F.R. § 214.2(h)(4)(iii)(C).

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

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), 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.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

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. . . . 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's foreign degree has not been determined to be the equivalent of a U.S. degree in business administration or a related field. Therefore, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), in order for the beneficiary to qualify for a specialty occupation requiring a degree in business administration or a related field, the record must demonstrate that she has education, specialized training, and/or progressively responsible experience equivalent to a U.S. baccalaureate or higher degree in business administration, as well as recognition of her expertise through progressively responsible positions directly related to this specialty.

For the first time on appeal, counsel submitted a credential evaluation written by [REDACTED], Senior Credential Evaluator at Education Credentials Evaluations, which states that the beneficiary has the U.S. equivalent of a Bachelor of Science in Business Administration from a regionally accredited university through a combination of her education and experience. Although [REDACTED] states that he is a Faculty and Doctoral Advisor for Walden University in Minneapolis, MN, and has "**[t]he authority to assess, evaluate, and grant College level credits for educational credentials, professional certifications, training and experience. . . .**" counsel does not provide independent evidence from Walden University to support this assertion, nor was evidence submitted that Walden University has a program for granting credit based on an individual's training and/or work experience. The AAO therefore finds that the evaluation from [REDACTED] together with the supporting documentation submitted, does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Aside from the decisive fact that the evidence of record does not establish [REDACTED] as competent under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) to evaluate experience, the AAO finds that the content of his evaluation of the beneficiary's experience would merit no weight even if [REDACTED] were qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). [REDACTED] bases his evaluation of the beneficiary's experience on the skeletal letters of the beneficiary's former employers, which, as discussed previously in this decision, indicate that the

beneficiary's experience was gained as an expediting clerk. He then concludes, without analysis, that "[t]his work experience was gained while working with peers, supervisors, and/or subordinates and/or subordinates [sic], who have a degree or its equivalent in the specialty occupation. This work experience embodies the theoretical knowledge normally found in college-level coursework. . . ." As this evaluation does not establish a substantive basis for its conclusion, it would have no probative value even if it were rendered by an official qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). USCIS 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, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), USCIS may determine that the beneficiary has the equivalent of a degree in business administration if she has a combination of education, specialized training, and/or work experience in areas related to this specialty. The evaluation on record is not supported by specific evidence. The letters from the beneficiary's former employers do not indicate that the beneficiary has relevant experience gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in business. Finally, the record lacks the required showing of the beneficiary's expertise in business. The evidence does not establish that the beneficiary is qualified to perform a specialty occupation.

Therefore, the AAO also finds that the petitioner did not submit sufficient documentation to show that the beneficiary qualifies to perform services in a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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