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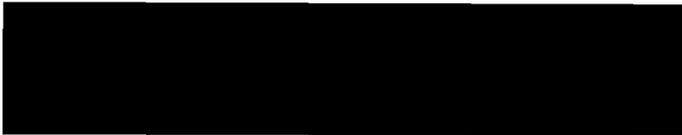
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **JUL 28 2011** Office: CALIFORNIA SERVICE CENTER FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Michael F. Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a real estate development/management office and real estate agency, and seeks to employ the beneficiary as a business opportunity and property investment developer. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that (1) the position was not a specialty occupation; and (2) the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal, counsel for the petitioner submits a statement on Form I-290B contending that the director's findings with regard to the beneficiary's qualifications were based on an erroneous conclusion of law and fact. Counsel does not address the specialty occupation basis for the denial, and no brief or additional evidence was submitted in support of the appeal.

The record of proceeding before the AAO contains: (1) the Form I-129 with supporting documentation; (2) the director's request for further evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The first issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

An occupation which requires [1] 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 [2] 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 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry

requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, 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 the minimum for entry into the occupation, as required by the Act.

In a March 30, 2009 letter, the petitioner explained that as a real estate development and management office, it purchases land for both commercial and residential projects, and manages projects that it previously purchased or developed. It further explained that, as a real estate agency, it represents both buyers and sellers in real estate transactions. The petitioner indicated that it would like to employ the beneficiary in the position of business opportunity and property investment developer, and claimed that he would be responsible for overseeing and directing the purchase of real property for real estate development projects, as well as managing the development and construction of both commercial and residential real estate property. Specifically, the petitioner stated that he would be responsible for the following:

- Manage and oversee the locating of ideal real estate properties for development.
- Manage existing real estate development projects.
- Maintain records of properties purchased, special permits issued, maintenance and operating costs, and property availability.
- Analyze sales and marketing of real estate development projects.
- Meet with prospective and existing tenants.
- Prepare reports summarizing financial and operational status of property or facility.
- Maintain contact with insurance carrier, fire and police departments, and other agencies to ensure protection and compliance with codes and regulations.
- Confer with legal advisors to ensure transactions are documented and that contracts and agreements are in accordance with federal and state laws and regulations.
- Assemble and analyze construction and vendor service contract bids.
- Negotiate the sale or lease of real property, and complete or review appropriate document and forms.
- Direct and coordinate the activities of staff and contract personnel and evaluate performance.

- Investigate complaints and violations of company policy and resolve problems following management rules and regulations.
- Meet with investors and purchasers to determine priorities, and discuss financial and operational status of property.

The petitioner further stated that a bachelor's degree or equivalent in architecture, construction management, or a closely related field is the minimum requirement for entry into the proffered position. Additionally, the petitioner stated that it would require the services of the beneficiary on a part-time basis for 20 hours per week.

In an April 14, 2009 RFE, the director requested additional information. Specifically, the director requested more detailed evidence demonstrating that the proffered position is a specialty occupation, including but not limited to a more detailed description of the proffered position and information pertaining to the petitioner's business, its hiring practices, and its organizational chart. Additionally, the petitioner requested evidence pertaining to the beneficiary's qualifications.

The petitioner addressed the director's queries in a response dated May 20, 2009 and provided the following updated description of duties and breakdown of time devoted to each of the duties of the proffered position:

50% Manage existing real estate development projects; maintain records of properties purchased, special permits issued, maintenance and operating costs, and property availability; prepare reports summarizing financial and operational status of property or facility; maintain contact with insurance carrier, fire and police departments, and other agencies to ensure protection and compliance with codes and regulations; confer with legal advisors to ensure transactions are documented and that contracts and agreements are in accordance with federal and state laws and regulations; assemble and analyze construction and vendor service contract bids; direct and coordinate the activities of staff and contract personnel and evaluate performance; meet with investors and purchasers to determine priorities, and discuss financial and operational status of property.

40% Manage and oversee the locating of ideal real estate properties for development; meet with prospective and existing tenants; negotiate the sale or lease of real property, and complete or review appropriate documents and forms.

10% Analyze sales and marketing of real estate development projects.

The petitioner also submitted copies of job postings for positions the petitioner considered parallel to the proffered position within the petitioner's industry, as well as a copy of the petitioner's organizational chart.

On June 8, 2009, the director denied the petition, determining that the petitioner had failed to establish that the proffered position was a specialty occupation or that the beneficiary was qualified to perform the duties of a specialty occupation. The director found that the proffered position was akin to the occupations of administrative services manager and real estate asset manager, neither of which required a bachelor's degree or its equivalent in a specific specialty for entry into the profession.

On appeal, counsel focuses on the director's denial based on the beneficiary's qualifications, and presents no arguments or additional evidence to address the specialty occupation issue.

The petitioner claims that the proffered position is that of a business opportunity and property investment developer. In reviewing the record, the AAO observes that the critical element is not the title of the position or an employer's self-imposed standards, 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 the minimum for entry into the occupation, as required by the Act.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty.

The director concluded that the proffered position included duties included in the occupations of administrative services managers as well as real estate asset managers as described in the *Handbook*. Upon review, the AAO finds that the proffered position as described is most akin to that of a real estate asset manager, which is described under the heading of "Property, Real Estate, and Community Association Managers" as follows:

Generally, property and real estate managers handle the financial operations of the property, making certain that rent is collected and that mortgages, taxes, insurance premiums, payroll, and maintenance bills are paid on time. Some oversee the preparation of financial statements and periodically report to the owners on the status of the property, occupancy rates, expiration dates of leases, and other matters. When vacancies occur, property managers may advertise the property or hire a leasing agent to find a tenant. They also may suggest to the owners what rent to charge. In community associations, homeowners pay no rent and pay their own real estate taxes and mortgages, but community association managers collect association fees that help pay for a variety of services such as playground, clubhouse, and swimming pool maintenance.

Often, property managers negotiate contracts for janitorial, security, landscaping, trash removal, and other services. They monitor the performance of contractors and investigate and resolve complaints from residents and tenants when services are not properly provided. Managers also purchase supplies and equipment for the property and make arrangements with professionals for repairs that cannot be handled by regular property maintenance staff.

In addition to fulfilling these duties, property managers must understand and comply with pertinent legislation, such as the Americans with Disabilities Act, the Federal Fair Housing Amendment Act, and local fair housing laws. They must make certain that their renting and advertising practices are not discriminatory and that the property itself acts in accordance with all of the local, State, and Federal regulatory and building codes.

* * *

Some property and real estate managers, often called *real estate asset managers*, plan and direct the purchase, sale, and development of real estate properties on behalf of businesses and investors. These managers focus on long-term strategic financial planning, rather than on day-to-day operations of the property. In deciding to acquire property, real estate asset managers consider several factors, such as property values, taxes, zoning, population growth, transportation, and traffic volume and patterns. Once a site is selected, they negotiate contracts for the purchase or lease of the property, securing the most favorable terms. Real estate asset managers review their company's real estate holdings periodically and identify properties that are no longer financially profitable. They then negotiate the sale of, or terminate the lease on, such properties.

Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos022.htm> (last accessed June 29, 2011).

The *Handbook's* section pertaining to the educational requirements for real estate asset managers, as noted by the director, states:

For the most part, onsite property managers who primarily oversee the rental and maintenance of properties learn on the job or have experience in the real estate or maintenance field. Managers of commercial properties and those dealing with a property's finances and contract management increasingly are needing a bachelor's or master's degree in business administration, accounting, finance, or real estate management, especially if they do not have much practical experience.

Education and training. Most employers prefer to hire college graduates for property management positions, particularly for offsite positions dealing with a property's finances and contract management and for most commercial properties. A

bachelor's or master's degree in business administration, accounting, finance, real estate, or public administration is preferred for these positions. Those with degrees in the liberal arts also may qualify, especially if they have relevant coursework. In addition, most new managers participate in on-the-job training. Many people entering jobs such as assistant property manager have onsite management experience.

Licensure. Real estate managers who buy or sell property are required to be licensed by the State in which they practice. In a few States, property association managers must be licensed. Managers of public housing subsidized by the Federal Government are required to be certified.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos022.htm> (last accessed June 29, 2011).

The *Handbook* does not indicate that a bachelor's degree or higher in a specific specialty or its equivalent is the normal minimum requirement for entry into the position. While the *Handbook* indicates that most employers *prefer* to hire college graduates, no specific specialty is identified as the area in which the degree must be obtained. *See id.* Therefore, the proffered position is not considered a specialty occupation according to the *Handbook*. *See id.*

When a job, like that of a real estate asset manager, can be performed by a range of degrees, without further specification, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558.

The petitioner has therefore failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the position as described in the record of proceeding. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner also has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that at least a bachelor's degree in a specific specialty or its equivalent 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.

Factors often considered by USCIS when determining this criterion 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As reflected in this decision's earlier discussion regarding relevant information in the *Handbook*, the *Handbook* does not indicate that the proffered position is one for which there is an industry-wide requirement for at least a bachelor's degree, or the equivalent, in a specific specialty. Also, there are no submissions from a professional association, firms, or individuals in the industry attesting that the proffered position is one that requires such a degree.

The petitioner submits four job postings in support of the contention that a bachelor's or higher degree in a specific specialty or its equivalent is common to the petitioner's industry in positions that are parallel to the proffered position and located in organizations that are similar to the petitioner. The postings submitted, however, are insufficient to establish this criterion.

Three of the four postings are for the position of construction manager, a position whose title and associated duties vary greatly from the proffered position of business opportunity and property investment developer/real estate asset manager. These vacancy announcements indicate that construction managers are required to provide on-site oversight of such projects as the construction of skyscrapers, high rise buildings, and refineries. At no time did the petitioner contend that the beneficiary's duties, which include locating investment properties and managing current assets, would also include the overseeing of construction sites. More notably, however, is the petitioner's statement on page 4 of the response to the RFE, where the petitioner specifically claims that the beneficiary will *not* be employed as a construction manager.

The final job posting is for the position of business development manager in a real estate/ property management company. While the duties of this position seem to correspond to the proffered position, the AAO notes that the hiring entity merely requires a bachelor's degree for entry into the position, and does not identify a specific specialty in which the degree must be obtained. Moreover, there is insufficient evidence to demonstrate that the hiring entity, [REDACTED] is similar in size and scope to the petitioner, which is a real estate development/management office and real estate agency that currently employs only five persons.

Further, the AAO notes that the record lacks independent evidence that the few job-posting samples submitted into the record are representative of industry-wide recruiting and hiring practices, or, for that matter, are representative even of the advertising firms' exclusive recruiting and hiring practices for the type of position advertised.

As discussed above, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, under the second prong of C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner may submit evidence to establish that its particular position is so complex or unique that only an individual with at least a bachelor's degree in a specific specialty or its equivalent can perform it.

The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist him in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain whatever aspects of the particular position proffered here proffered are so complex or unique as to be distinguishable from those of similar but non-baccalaureate, non-specialty-occupation employment.

The petitioner has thus failed to establish the proffered position as a specialty occupation under either alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. In response to the RFE, the petitioner claims that its president has been responsible for the duties of the proffered position but is now busy with other endeavors and thus requires the services of the beneficiary. There is no indication in the record, therefore, to demonstrate that the petitioner has a history of hiring only degreed individuals for the proffered position.

The AAO notes that while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty. The duties of the position as described appear to encompass routine duties associated with real estate asset management and acquisition. While the petitioner claims that the duties of the proffered position are sufficiently complex, the record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform these additional tasks is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The AAO finds that, to the extent that they are described, the proposed duties do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between such knowledge and the attainment of a particular educational level in a specific specialty. Rather, the AAO finds that the proposed duties are presented in the record of proceeding in terms of generalized and generic functions that, as so generally described, fail to convey that their performance would require application of a particular level of a body of highly specialized knowledge that is usually associated with attainment of a particular level of educational attainment in a specific specialty. As the petitioner has not established that the proffered position's specific duties require the application of a level of specialized and complex knowledge usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific discipline, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the record of proceeding, the AAO determines that the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this basis.

The second issue before the AAO is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Most directors should, and will, first determine whether a job is a specialty occupation before deciding whether the individual is qualified for the job. A beneficiary's credentials to perform a particular job, therefore, are relevant only when the job is found to be a specialty occupation. The AAO, however, will review the beneficiary's qualifications since they were raised by the director as a basis for the denial and addressed by counsel on appeal.

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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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.

Even if the petitioner had established that the proffered position requires a bachelor's degree in a specific specialty and is thereby a specialty occupation, the director correctly determined that the beneficiary is not qualified to perform the duties of such a specialty occupation.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel contends that the director's findings constituted an erroneous conclusion of law and fact, and contends that the beneficiary is in fact qualified for the position.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a specific specialty. The evidence in the record of proceeding does not establish that the beneficiary holds either a United States baccalaureate degree or a foreign degree determined to be equivalent to a baccalaureate degree from an accredited university in the United States. Therefore, the director correctly noted that the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree 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; or

- (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.

On appeal, counsel claims that by virtue of the beneficiary's experience (over thirty-five years of management experience and over twenty years experience in the construction and development of real property), he is well qualified to perform the duties and responsibilities of commercial marketing specialist for the petitioner. Counsel urges reconsideration of the evidence previously submitted, and submits no new documentation on appeal.

To establish the beneficiary's qualifications, the petitioner relied in material part upon the evaluations of education and experience that were produced for the petitioner by two separate sources, namely, (1) [REDACTED] of [REDACTED] and (2) [REDACTED] and [REDACTED]

The AAO finds that the portion of [REDACTED] evaluation that portends to evaluate the beneficiary's experience has no evidentiary value, as the evidence of record does not establish that, at the date of his evaluation, he was "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," as required for evaluations of training and/or experience by 8 C.F.R. § 214.2(h)(4)(iii)(C)(4)(1). In this regard the AAO notes that, while [REDACTED] claims that he has the authority to grant college-level credit, there is no letter from [REDACTED] endorsing the professor's status or corroborating this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Likewise, the record of proceeding fails to establish that [REDACTED] is an official within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4)(1). The two letters of endorsement included with his opinion letter are of no evidentiary value. The first letter, dated July 12, 2004, predates [REDACTED] May 12, 2009 evaluation by nearly five years. Its relevance is not established, for it is not apparent that it reflects circumstances at the time of the evaluation, or, for that matter, that the letter's author was even alive, let alone employed by the relevant educational institution, on the date of the evaluation. The second letter, dated July 25, 2008, is more current in that it was issued

approximately one year prior to [REDACTED] opinion. However, while the endorsing letter claims that “faculty” have the authority to grant college level credit for training and experience, and that the faculty list for 2008-2009 meet this criteria, this letter fails to specifically endorse [REDACTED] nor is there evidence in the record to demonstrate that he was included on the faculty list for 2008-2009. Consequently, this letter likewise fails to demonstrate that [REDACTED] is an authorized official within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4)(1).

The petitioner may also establish eligibility under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). When USCIS determines an alien’s qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien’s training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien’s experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains the beneficiary’s resume, which claims that the beneficiary has been employed by various companies in Germany since 1969. Specifically, the resume states his employment history as follows:

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority’s opinion must state: (1) the writer’s qualifications as an expert; (2) the writer’s experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

January 1969 - March 1979: Manager at a family-owned saw mill and hardware store where he oversaw day-to-day operations.

April 1979 - June 1996: Owner/Manager of largest commercial/residential project in the city [REDACTED].

January 2004 - February 2005: Employed in marketing, real estate procurement and management, development and setup for [REDACTED].

March 2005 - October 2008: General Manager of [REDACTED] Development & Construction LLC.

February 2009 - Present: Employed by the petitioner.

1996 - Present: Owner of [REDACTED]

While the record contains certified translations of letter from representatives of these companies which corroborate the beneficiary's claimed employment, they simply confirm the worksites or projects and dates of the beneficiary's employment, and provide no detail with regard to the beneficiary's duties while employed in these claimed positions. Therefore, the AAO cannot determine whether these positions involved the theoretical and practical application of specialized knowledge. Moreover, there is no evidence that the beneficiary has recognition of expertise in the industry. Thus, absent corroborating evidence, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge in a field related to the proffered position or that the beneficiary has recognition of expertise in the industry as counsel asserts on appeal. 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 on appeal 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).

The petitioner has failed to establish that, even if the proffered position were to be deemed a specialty occupation, the beneficiary is qualified to perform the duties of a specialty occupation position. For this additional reason, the petition will be denied.

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.