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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

[REDACTED]

D2

Date: **OCT 03 2011**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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

ON BEHALF OF PETITIONER:

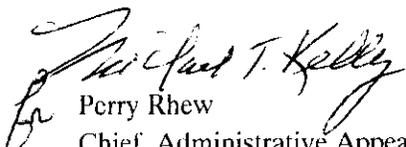
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INSTRUCTIONS:

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,


Perry Rhew
Chief, Administrative Appeals Office

the petitioner's products; negotiate contracts with suppliers, the AAO observes that such an assertion is unsubstantiated by evidence in the record of proceeding . As noted above, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190. 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. at 534; *Matter of Laureano*, 19 I&N Dec.1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The *Handbook* addresses purchasing manager positions in the chapter entitled "Purchasing Managers, Buyers, and Purchasing Agents." This chapter describes the general duties of those positions as follows:

Purchasing managers, buyers, and purchasing agents buy a vast array of farm products, durable and nondurable goods, and services for companies and institutions. They attempt to get the best deal for their company—the highest quality goods and services at the lowest possible cost. They accomplish this by studying sales records and inventory levels of current stock, identifying foreign and domestic suppliers, and keeping abreast of changes affecting both the supply of, and demand for, needed products and materials. Purchasing professionals consider price, quality, availability, reliability, and technical support when choosing suppliers and merchandise. To be effective, purchasing professionals must have a working technical knowledge of the goods or services to be purchased.

The AAO finds that the description of the duties of the proffered position provided by the petitioner's vice president comports with the *Handbook* description of the Purchasing Manager occupational classification.

The AAO will now discuss the application of the alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this particular record of proceeding.

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

The *Handbook* describes the educational requirements of purchasing manager positions as follows:

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

Educational requirements tend to vary with the size of the organization. Large stores and distributors prefer applicants who have completed a bachelor's degree program with a business emphasis. Many manufacturing firms put an even greater emphasis on formal training, preferring applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences. A master's degree is essential for advancement to many top-level purchasing manager jobs.

This passage fails to indicate that purchasing manager positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty for many reasons. First, that large distributors prefer applicant's with a bachelor's degree with a business emphasis suggests that smaller businesses, such as the petitioner, may not. Second, a preference for applicants with such a bachelor's degree is not a minimum requirement. Third, as previously noted in this decision, a bachelor's degree with a business emphasis, even if that denotes a bachelor's degree in business administration, is not a bachelor's degree in a specific specialty.

Therefore, the petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will consider 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 a bachelor's degree, in a specific specialty, 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 individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As was observed above, the *Handbook* provides no support for the proposition that the petitioner's industry, or any other, requires purchasing managers to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of purchasing managers that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. Further, the record contains no letters or affidavits from others in the hair care products manufacturing industry with regard to industry recruiting and hiring practices for the type of position that is the subject of this petition.

In short, the record contains no evidence to support the assertion that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and the petitioner has not, therefore, demonstrated

that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner demonstrates that, notwithstanding that other purchasing manager positions in the petitioner's industry may not require a minimum of a bachelor's degree or the equivalent in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such a degree.

The description of the duties of the proffered position does not differentiate the proffered position from other purchasing manager positions. Rather, that description is limited to the generic duties typical of purchasing manager positions, at least some of which the *Handbook* indicates do not require a minimum of a bachelor's degree, or the equivalent, in a specific specialty. The AAO finds that, to the extent that the proffered position is described in the record (as comprised of duties such as identifying appropriate suppliers; purchasing chemicals, supplies and services; and maintaining and analyzing records and inventory), it is not evident that the proffered position is more complex and unique than purchasing manager positions performed by persons without a bachelor's degree, or the equivalent, in a specific specialty.

Counsel's assertion that purchasing chemicals, supplies, and services requires financial analysis so complex that it can be only be earned by receiving a bachelor's degree or the equivalent is without any apparent basis, as is his assertion that to keep abreast of the beauty product industry and gathering information pertinent to demand for the petitioner's products requires courses in macroeconomics, microeconomics, and business management. Again, the unsupported assertions of counsel are not, in themselves, evidence, and are entitled to no evidentiary weight. *Matter of Obaighbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1); *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The only evidence offered to establish that the proffered position is sufficiently complex or unique to require a minimum of a bachelor's degree or the equivalent in a specific specialty is the statement of the petitioner's vice president that the proffered position requires a bachelor's degree in business administration. That statement lacks corroboration by evidence in the record of proceeding and, as reflected in this decision's earlier comments, it is not supported by the relevant information in the *Handbook*. It does not, therefore, merit significant evidentiary weight.

Although the statements by the petitioner's officer are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)).

Yet further, the assertion that the proffered position requires a minimum of a bachelor's degree or the equivalent in business administration is not, as was noted above, an assertion that the proffered position requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*. Even if

corroborated and found credible, therefore, it would not demonstrate that the proffered position is a position in a specialty occupation and that the visa petition is approvable.

As the petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with a bachelor's degree, or the equivalent, in a specific specialty, it has not demonstrated that the proffered position qualifies as a specialty occupation pursuant to the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As the record has not established a prior history of recruiting and 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).²

The record contains no evidence of a previous history of recruiting and hiring to fill the proffered position. Further, the petitioner's vice president stated that the educational requirement of the proffered position would be satisfied by an otherwise unspecified bachelor's degree in business administration, which, as was noted above, demonstrates that the petitioner does not normally require a minimum of a bachelor's degree or the equivalent in a specific specialty for the proffered position.

The petitioner has not, therefore demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

² To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

As was observed earlier in this decision, to the extent that they are described in this record of proceeding, the proposed duties, such as maintaining vendor relationships and negotiating prices, do not exceed the generic duties of a purchasing manager position as described in the *Handbook*; and, as reflected in this decision's earlier quoting of the *Handbook*, the *Handbook* indicates no usual association between such duties and the attainment of a bachelor's or higher degree in a specific specialty. Further, the record of proceeding contains no documentary evidence establishing that the specific performance of those duties in the context of this particular proffered position would necessitate the application of a body of highly specialized knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty.

Accordingly, the petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO recognizes that this is an extension petition. The director's decision does not indicate whether she reviewed the prior approvals of the previous nonimmigrant petitions filed on behalf of the beneficiary. If the previous nonimmigrant petitions were approved based on the same unsupported assertions and evidentiary deficiencies that are contained in the current record, those approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the instant nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001). The prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. See *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the submissions on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

Beyond the decision of the director, the AAO finds that the petition must also be denied because the record of proceeding does not establish that the beneficiary would be qualified to serve in a specialty occupation, if the petitioner had established that the position for which the petition was filed were one. The AAO conducts appellate review on a *de novo* basis (See *Soltane v. DOJ*, 381 F.3d 143, 145

(3d Cir. 2004), and it was in the exercise of this function that the AAO identified this additional ground for denying the petition.

The petitioner's vice president stated that the proffered position "requires a Bachelor's degree in Business Administration, a related field, or an equivalent work experience." The record does not indicate that the beneficiary has a college degree but, rather that the petitioner is relying on her employment experience as equivalent to a bachelor's degree in business administration.

In order to equate a beneficiary's employment experience to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) requires 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."

The record contains an evaluation that the petitioner obtained from a professor of marketing at the [REDACTED]. In it, the evaluator stated that the beneficiary's employment experience is equivalent to a bachelor's degree in business administration with a concentration in management. He also stated, "[REDACTED] as a program for granting college level credit based on a candidate's foreign educational credentials, training, and/or employment experience" and "I have authority to grant college-level credit based on a candidate's foreign educational credentials, training, and/or employment experience in marketing, management, business administration, and related fields."

However, USCIS will not accept a faculty member's opinion as to the college-credit equivalent of a particular person's work experience or training, unless authoritative, independent evidence from the official's college or university, such as a letter from the appropriate dean or provost, establishes that the official is authorized to grant academic credit for that institution, in the pertinent specialty, on the basis of training or work experience, in a program that the college or university has for granting such credit, in that particular specialty, on that basis.

The evaluation was accompanied by a letter from an Associate Dean and Director of Graduate Programs at the Lubin School of Business. He made various statements pertinent to the evaluator's authority, but did not unequivocally state that the author of the evaluation is authorized to grant academic credit for Pace University, in Business Administration, on the basis of training or work experience, in an existing program for the granting of such credit, that is, in the words of the regulation, that this evaluator, was at the time of his evaluation, "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."

The petitioner has not shown that the beneficiary has a minimum of a bachelor's degree or the equivalent in a specific specialty within the meaning of the pertinent statutes and regulations and has not, therefore, demonstrated that the beneficiary is qualified to perform in a specialty occupation. The appeal will be dismissed and the visa petition will be denied on this additional basis.

The petition will be denied and the appeal dismissed for each of 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. The appeal will be dismissed and the petition denied.

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