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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: **MAY 03 2012**

Office: VERMONT 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:

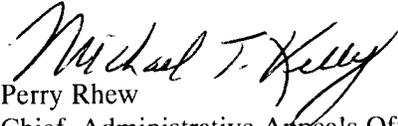


INSTRUCTIONS:

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 
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 visa petition in this matter was prepared by an Atlanta, Georgia attorney, and accompanied by a properly executed Form G-28, Notice of Entry of Appearance. The appeal in this matter, however, was prepared by a Duluth, Georgia attorney, and accompanied by another properly executed Form G-28. All representations will be considered, but today's decision will be provided only to the petitioner and the petitioner's current counsel of record.

On the Form I-129 visa petition the petitioner stated that it is a "Retail" business. The name pursuant to which it does business suggests that it is, more specifically, [REDACTED] franchise. To employ the beneficiary in what it designates as a financial manager position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, present counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, present counsel submitted a brief and additional copies of evidence previously presented.

As will be discussed below, the AAO has determined that the director's decision to deny the petition on the specialty occupation issue was correct. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and present counsel's submissions on appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

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.

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

With the visa petition, previous counsel submitted an undated letter from the petitioner's CEO. That letter contains the following description of the duties of the proffered position:

To analyze cash flow and recommend cash levels available for investment and operation, develop conclusions on results and trends to summarize for executive reporting, providing monthly key business data for executive management review, develop and enhance processes and IT reporting database for timely and accurate data production, design, prepare and communicate with executive management on presentations and other reporting matters as required, and foster best practices across Great American Cookies operating companies and support various corporate initiatives.

As to the educational requirement of the proffered position, the petitioner's CEO stated:

For the complicated technical research work, the sponsored position normally required [sic] at least a Bachelor degree in Accounting. The position also requires proficiency in all common accounting principles and systems. The complicated financial analysis work justifies our requirements for a Bachelor degree. This education is normal in our company and in this industry.

On November 18, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, previous counsel submitted (1) 16 vacancy announcements, printed from web content of various job search sites; (2) letters pertinent to the beneficiary's employment experience; (3) an evaluation, dated October 30, 2009, of the beneficiary's qualifications, including education and employment experience; (4) an evaluation, dated December 29, 2009, of the beneficiary's qualifications, including education and employment experience; (5) another evaluation, also dated December 29, 2009, produced by [REDACTED] at Portland State University, of both the educational requirements of the proffered position and the beneficiary's qualifications, including education and experience; (6) a letter, dated December 15, 2009, from the petitioner's CEO; and (7) previous counsel's own letter, dated December 30, 2009.

The evaluations and the vacancy announcements provided will be addressed later in this decision.

Previous counsel's December 30, 2009 letter refers to the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the DOL's *O*Net Online*, the vacancy announcements provided, and the December 29, 2009 evaluation of [REDACTED] as evidence that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

The director denied the petition on January 21, 2010, finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, present counsel again cited the *Handbook*, *O*Net Online*, the vacancy announcements, and Professor Sapp's evaluation as evidence that the proffered position qualifies as a specialty occupation position.

The AAO will now address the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent. In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

Present counsel's assertion that *O*Net Online* supports the proposition that the proffered position qualifies as a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty is not persuasive. It is based on the fact that *O*Net Online* accords Financial Manager positions a Specific Vocational Preparation (SVP) code of 7.0 to <8.0. As such, it relies on the assumption that the proffered position qualifies as a Financial Manager position, rather than being, for instance, an accountant position or a bookkeeper position.

Further, however, the assignment of that SVP code does not support that a position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. It indicates that the position has been grouped among positions most of which require a bachelor's degree, but some of which do not.

An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training,

formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. It does not indicate that any particular position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

The AAO recognizes the *Handbook*, also cited by present counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ In the chapter entitled Financial Managers, the *Handbook* describes the duties of financial manager positions as follows:

Almost every firm, government agency, and other type of organization employs one or more financial managers. *Financial managers* oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. Managers also develop strategies and implement the long-term goals of their organization.

The duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, risk and insurance manager, and manager of international banking. *Controllers* direct the preparation of financial reports, such as income statements, balance sheets, and analyses of future earnings or expenses, that summarize and forecast the organization's financial position. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments. *Treasurers* and *finance officers* direct their organization's budgets to meet its financial goals. They oversee the investment of funds, manage associated risks, supervise cash management activities, execute capital-raising strategies to support the firm's expansion, and deal with mergers and acquisitions. *Credit managers* oversee the firm's issuance of credit, establishing credit-rating criteria, determining credit ceilings, and monitoring the collections of past-due accounts.

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos010.htm> (last accessed January 9, 2012).

The AAO harbors some doubt that the proffered position is a financial manager position. Although the duties attributed to the proffered position include preparation of financial reports, directing investment activities, and implementing cash management strategies, those duties are common to accountant positions too. Further, the proffered position does not fit neatly into any of the subsets of financial manager positions described in the second paragraph set out above. However, the AAO

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.

will assume, *arguendo*, that the proffered position is a financial manager position as present counsel asserted, or at least implied.

The *Handbook* states the following about the educational requirements of financial manager positions.

A bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers. However, many employers now seek graduates with a master's degree, preferably in business administration, finance, or economics. These academic programs develop analytical skills and teach financial analysis methods and technology.

The acceptability of a bachelor's degree in finance, accounting, economics, or business administration is not indicative of the position's requiring at least a bachelor's degree in a specific specialty.

Further, even if the position required a minimum of a bachelor's degree or the equivalent in business administration, with no permissible alternatives, that would not demonstrate that it is a specialty occupation position. The requirement of a bachelor's degree in business administration, without further specification, is inadequate because to establish that a position qualifies as a specialty occupation a petitioner must demonstrate that it requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position 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. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Because the *Handbook* states that a bachelor's degree in business administration is a sufficient educational qualification for at least some financial manager positions, it does not support the proposition that financial manager positions categorically qualify as specialty occupation positions by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

In his December 29, 2009 evaluation, Professor Sapp stated:

It is widely regarded that the minimum requirement for being employed in a position such as Financial Manager would be a bachelor's degree or equivalent in finance, accounting, economics, business administration or a closely[-]related field.

He further stated, "[T]he most appropriate degree [to the proffered position] would be a bachelor's degree or equivalent in finance, accounting, economics, business administration or a closely[-]related field."

Further still, he stated:

For companies in the retail food industry, it is most common to find a bachelor's degree or equivalent in finance, accounting, economics, business administration or a closely[-]related field as the minimum requirement for a position such as Financial Manager.

In each instance, [REDACTED] made apparent his belief that an otherwise undifferentiated bachelor's degree in business administration would be a sufficient qualification, including in the petitioner's industry, for a financial manager. Although he provided no corroboration for his view, the AAO observes that, even if taken at face value, the professor's assertion does not mark the proffered position as a specialty occupation position, for the reason described in detail above.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of technical knowledge in the computer/IT field, but do not establish any particular level of formal education as minimally necessary to attain such knowledge.

The record contains no other evidence pertinent to whether a minimum of a bachelor's degree or the equivalent in a specific specialty is normally the minimum requirement for entry into the particular position and has not, therefore, satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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 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 financial 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 financial managers that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the petitioner's industry.

As was noted above, previous counsel did provide 16 vacancy announcements. Of those announcements, 11 are for positions in industries other than the petitioner's, including a manufacturing firm, a business support services firm, a healthcare firm, an on-line payment system firm, a computer services firm, financial services firms, a nonprofit that raises funds for state conservation needs, an emergency shelter for women and children, and a firm that describes itself as being in the "commercial fitness industry." Of the five remaining firms, two are for unidentified companies in unidentified industries. Of the three yet remaining firms, one is a retail pharmacy and one is an "Office Design/Office Furniture Supplier." As those companies are retailers, one might consider, if painting with a broad brush, that they are in the petitioner's industry. However, both of those firms, while they require a minimum of a bachelor's degree for the positions announced, do not require a degree in any specific specialty.

The remaining vacancy announcement was placed by [REDACTED] Inc., which offers franchises in the [REDACTED]. As this company is in the food service industry, it might, again, be considered to be in the same industry as the petitioner, notwithstanding that it offers franchises, rather than being a single franchise operation, as the petitioner is. That vacancy announcement is for a Financial Reporting Manager position, and states that the position requires a bachelor's degree in accounting. A comparison of the duties of that position to the duties of the proffered position does not make clear whether they should be considered parallel positions. Further, even if the position announced and the proffered position might be considered to be parallel positions in the same industry, that one of the 16 vacancy announcements provided might be considered to be for a parallel position in the petitioner's industry and to require a minimum of a bachelor's degree or the equivalent in a specific specialty does not render those 16 vacancy announcements, considered as a whole, convincing evidence that a minimum of a bachelor's degree or the equivalent in a specific specialty is required for positions parallel to the proffered position in the petitioner's industry.

Further, even if all 16 positions were demonstrated to be for parallel positions in the petitioner's industry with organizations similar to the petitioner and unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, the submission of the 16 announcements is statistically insufficient to demonstrate an industry-wide requirement. The record contains no independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the petitioner's industry.

The petitioner has not demonstrated 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 has not, therefore, satisfied the criterion at 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 establishes that, notwithstanding that other financial 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 credentials.

The AAO finds that, to the extent that they are described in the record of proceeding, the proposed duties do not show that the proffered position is so complex or unique that it can be performed only by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO also finds that the petitioner failed to sufficiently develop complexity or uniqueness as a substantial aspect of the proffered position, so as to distinguish it from financial analyst positions not so complex or unique as to require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Analyzing cash flow and recommending amounts of cash to be retained for operation and invested, developing conclusions to summarize for executive reporting, providing monthly reports for executive management review, etc., far from being more complex or unique than those financial analyst positions that do not require a specialized degree, appear to be generic duties common to financial analyst positions in general.

The petitioner provided no evidence that the proffered position is more complex or unique than financial manager positions that can be performed by persons with less than a bachelor's degree or the equivalent in a specific specialty. Therefore, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes 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, or the equivalent, in a specific specialty.

Again, however, the duties of the proffered position, rather than appearing to be so specialized and complex that the knowledge required to perform them is usually associated with attainment of a minimum of a bachelor's degree or the equivalent in a specific specialty, appear to be typical of financial manager positions in general, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

As so generally and generically related in this record of proceeding, developing and enhancing processes and a reporting database for data production; designing, preparing reports and communicating them to management; fostering best practices within the company, supporting corporate initiatives, etc., contain no indication that they are usually associated with attainment of a minimum of a bachelor's degree or the equivalent in a specific specialty, especially relative to other financial manager positions that, according to the *Handbook*, normally do not have such a minimum entry requirement.

For the reason discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director was correct in his determination that the record before him 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 on an additional basis, which will now be discussed, that was not addressed in the director's decision. 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 basis for denying the petition.

Evidence in the record shows that the beneficiary has a bachelor of commerce degree awarded by the University of Bombay, in India. That degree typically requires three years of academic study. The record also contains evidence pertinent to the beneficiary's employment experience. As was noted above, the record contains three evaluations pertinent to the beneficiary's qualifications. None of those evaluations claim that the beneficiary's education, in itself, is equivalent to a U.S. bachelor's degree.

One evaluation, dated October 30, 2009, was prepared by [REDACTED] a credential evaluator, who stated that, based on the beneficiary's education and employment experience, considered together, the beneficiary has the equivalent of a bachelor's degree in business administration in accounting awarded by a U.S. institution. In another letter from [REDACTED] dated December 2, 2009, [REDACTED] stated that, in a previous position at the Georgia Institute of Technology in Atlanta, Georgia, he "evaluated and awarded credit from students transferring courses from both domestic and international colleges." That letter contains no indication that [REDACTED] currently has any such authority. It contains no indication that [REDACTED] ever had authority to award credit for employment experience or for training, other than academic study. It contains no indication that the Georgia Institute of Technology, where [REDACTED] claims to have worked, had a program for awarding academic credit for employment experience.

Another evaluation, dated December 29, 2009, was prepared by [REDACTED] who is also a credit evaluator. That evaluation states that the beneficiary's education and employment experience, considered together, are equivalent to a bachelor's degree in business administration with a

specialization in accounting awarded by a U.S. institution. That evaluation is accompanied by no evidence, nor even an assertion, that [REDACTED] has, or ever had, the authority to award academic credit for training or experience at any U.S. institution with a program for awarding academic credit for such training or experience.

The third evaluation, prepared by [REDACTED] was discussed above in the context of the requirements of the proffered position. It also makes an assertion pertinent to the beneficiary's qualifications. It states that the beneficiary's education and experience, taken together, are equivalent to a bachelor's degree in business administration with a specialization in accounting awarded by a U.S. institution. In that evaluation, [REDACTED] also stated that he has authority to grant college-level credit for training and/or work experience in business administration within the School of Business at Portland State University, and that Portland State University has a program for awarding such credit for training and/or experience. That evaluation is accompanied by no extrinsic evidence to corroborate [REDACTED] claimed authority or that Portland State University has such a program. Accordingly, the AAO will not accept this author's undocumented claim.

In order to consider a beneficiary's employment experience as equivalent to a U.S. bachelor's degree, in whole or in part, 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;

Neither [REDACTED] claimed such authority. The AAO will not consider their evaluations in determining whether the petitioner has demonstrated that the beneficiary has the equivalent of a U.S. bachelor's degree.

[REDACTED] does claim that authority. However, USCIS will not accept an 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 person providing that opinion is authorized to grant academic credit for that institution, in the pertinent specialty, on the basis of training or work experience, and that the college or university has a program for awarding such credit for education and/or experience. [REDACTED] evaluation is not accompanied by any such evidence corroborating his authority, and will not be considered in the determination of whether the beneficiary has the equivalent of a U.S. bachelor's degree.

The petitioner is relying, in part, on the beneficiary's employment experience to show that the beneficiary has the equivalent of a bachelor's degree. However, the record contains no evidence that satisfies the requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The beneficiary's employment experience will not, therefore, be considered. The record does not contain evidence, nor even an assertion, that, without consideration of employment experience, the beneficiary has the equivalent of a U.S. bachelor's degree.

The AAO observes that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or the equivalent, but that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that specific specialty*. See *Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

In the instant case, however, the petitioner has not demonstrated that the beneficiary has the equivalent of any U.S. bachelor's degree. Therefore, even if the petitioner had demonstrated that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, it would have failed to demonstrate that the beneficiary is qualified to perform in the proffered position. The appeal will be dismissed and the visa petition denied on this additional basis.

The appeal will be dismissed and the visa petition will be denied on both of the bases described above, with each considered as an independent and alternative basis for the decision. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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