

**[Final Conclusion for all Sample Analysis in Criterion (3):]**

As such, you have not submitted sufficient documentation to show that you normally require a degree or its equivalent in a specific specialty for the position.

**(4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.**

**(4) SAMPLE ANALYSIS 1 OF 2 - No evidence submitted – Petitioner's unsubstantiated assertions are insufficient to establish specialized & complex duties:**

The record contains insufficient information to establish the specialized and complex nature of the proffered position.

As already discussed above, the evidence does not distinguish the difference between the duties to be performed by the beneficiary and those normally performed by **[Insert Job Title]**, and how the duties of the proffered position are more specialized and complex. As such, there is insufficient documentation on record to establish that the duties to be performed are so specialized and complex that the knowledge required to perform the duties would be associated with the attainment of a baccalaureate or higher degree in a specific specialty.

**(4) SAMPLE ANALYSIS 2 OF 2 - No evidence submitted – Counsel's clarification is insufficient to establish specialized & complex duties:**

In response to USCIS' Request for Evidence, counsel clarified the original duties of the proffered position. While this clarification of duties does indicate that the proffered position requires a certain amount of skill, training, and attention to detail, they do not establish that the proffered position is any more specialized or complex than any other **[Insert Job Title]** job. Without additional evidence as to the specialized and complex nature of the offered job, you have not met the fourth criterion of 8 C.F.R. 214.2(h)(4)(iii)(A).

**[End Sample Analysis for Criteria (4)]**

**CONCLUSION:**

You have not established that any of the four factors enumerated in 8 C.F.R. 214.2(h)(4)(iii)(A) are present in this proceeding. It is, therefore, concluded that you have not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof to establish eligibility for a desired preference rests with you, the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

One Issue Denial

Consequently, the petition is hereby denied for the above stated reason.

Multiple Issue Denial

Consequently, the petition is hereby denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

*If the petitioner is requesting consulate/embassy notification, provide the following evidence in duplicate. Any document submitted to the U.S. Citizenship and Immigration Services (USCIS) containing a foreign language, must be accompanied by a full English language translation that has been certified by the translator as complete and accurate, and that the translator is competent to translate from the foreign language into English.*

#### **H-1B Specialty Occupation**

*Specialty Occupation* means an occupation which requires the theoretical and practical application of a body of highly specialized knowledge and which requires the attainment of a baccalaureate or higher degree or its equivalent, in a specific specialty, as a minimum, for entry into the occupation in the United States.

Provide the following to establish that the present petition meets the criteria for H-1B petitions involving a specialty occupation:

#### **EVIDENCE PERTAINING TO THE PROFFERED POSITION**

**Position requirements:** Submit the following additional evidence to establish that the proffered position qualifies as a specialty occupation:

- **Job Description:** Provide a more detailed description of the work to be performed by the beneficiary for the entire requested period of validity. Include specific job duties, the percentage of time to be spent on each duty, level of responsibility, hours per week of work, and the minimum education, training, and experience necessary to do the job. Also, explain why the work to be performed requires the services of a person who has a college degree or its equivalent in the occupational field.

**OPTIONAL:** Additionally, if the beneficiary will supervise or direct others submit a copy of a line-and-block organizational chart showing the petitioner's hierarchy and staffing levels. List all divisions in the company. Clearly identify the proffered position in the chart. Also, show the names and job titles for those persons, if any, whose work will come under the control of the proposed position. Indicate who will direct the beneficiary, by name and job title.

- **Standards for a Specialty Occupation Position:** In order to qualify as a specialty occupation, the position must meet one or more of the following standards for a specialty occupation:
  - 1) Baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position; or that
  - 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; or that

- 3) the employer normally requires a degree or its equivalent for the position; or that
- 4) the nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The following is a discussion of the four criteria for a position to qualify as a specialty occupation; why the position presently does not appear to qualify; and/or additional requested documentation to submit in support of the petition:

- 1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

The Occupational Outlook Handbook (OOH), (a publication of the United States Department of Labor), indicates that a(n) [Insert specific OOH position title] is an occupation that does not require a baccalaureate level of education in a specific specialty as a normal, minimum for entry into the occupation. There is no standard for how one prepares for a career as a [Insert Position] and no requirement for a degree in a specific specialty. The requirements appear to vary by employer as to what course of study might be appropriate or preferred. As a result, the proffered position cannot be considered to have met this criterion.

Therefore, provide additional evidence to establish that the proffered position qualifies under one or more of the remaining three criteria:

- 2) the degree requirement is common to the industry in parallel positions among similar organizations (i.e., organizations with [INSERT NUMBER] employees) 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;
  - Position: Provide evidence that the position of [title of position] is a common position required by similarly sized offices with similar annual incomes. Also provide evidence that the petitioner's competitors normally require degrees in a specific specialty for closely related positions to that of [position].
  - Job Listings: Provide evidence to establish a degree requirement is common to the industry in parallel positions among similar organizations. Evidence may include job listings or advertisements. However, the job listings must clearly show that the employers who published the job announcements are similar to the petitioner's organization. More importantly, the listings must clearly show the

specific educational background required to perform the duties of the proffered position.

- **Industry-related professional association:** Documentation may be submitted to show that an industry-related professional association has made a bachelor's degree in a specific specialty a requirement for entry into the field.

Provide the minimum requirements and criteria used to apply for membership in the association in which the beneficiary claims membership. Also, include evidence that lists the number of current members, the status held by the association in the international community and in the academic field, and any other conditions or requirements for membership.

- **Firms or Individuals in the Industry:** Provide letters or affidavits from firms or individuals in the industry that attest that such firms routinely employ and recruit only degreed individuals in a specific specialty; or copies of job announcements from similar organizations as the petitioner. Also, provide the following:

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.

3) the employer normally requires a degree or its equivalent for the position;

- **Position Announcement:** To support the petitioner's contention that the position is a "specialty occupation," provide copies of the petitioner's present and past job vacancy announcements. The petitioner may also provide classified advertisements soliciting for the current position, showing that the petitioner requires its applicants to have a minimum of a baccalaureate or higher degree or its equivalent in a specific specialty.
- **Past Employment Practices:** Provide evidence to establish that the petitioner has a past practice of hiring persons with a baccalaureate degree, or higher in a specific specialty, to perform the duties of the proffered position. Indicate the number of persons employed in similar positions. Further, submit documentation to establish how many of those persons have a baccalaureate degree or higher and the particular field of study in which the degree was attained. Documentation should include copies of transcripts and pay records or Quarterly Wage Reports for the employees claimed to hold a baccalaureate degree in the specific field of study.

- **Petitioner's Products or Services:** Explain what differentiates the petitioner's products or services from others in the industry and why it requires a baccalaureate level of study to perform the duties of the position. Provide documentary examples of the petitioner's products or services (i.e., copies of business plans, reports, presentations, evaluations, recommendations, critical reviews, promotional materials, designs, blueprints, newspaper articles, web-site text, news copy, photographs of prototypes, etc.), in order to establish the petitioner's claims that it normally requires a degree in a specific specialty to perform the proposed duties.
- 4) the nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

As discussed in the Occupational Outlook Handbook there is no clear standard for how one prepares for a career in the proffered position and no requirement for a degree in a specific specialty. The requirements appear to vary by employer as to what course of study might be appropriate or preferred. Merely performing the normal duties of a position that does not routinely require a baccalaureate degree in a specific specialty does not establish that the duties are specialized and complex even if the beneficiary has a degree in a field of study related to the occupation - every college graduate does not qualify as a member of a specialty occupation.

Therefore, in such cases, when determining whether a particular job qualifies as a specialty occupation the specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the USCIS considers.

- **Nature of the Position:** Provide, in layman's terms, a clear explanation of what differentiates the proffered position from other related "non-specialty occupation" positions. Compare and contrast those duties to be performed that are more discretionary, demanding, complex, highly advanced, specialized, or sophisticated - exceeding industry or normal position standards - such that a baccalaureate level of education in a specific field of study is a realistic prerequisite for entry into the proffered position. Be exact and provide documentation to substantiate the claims of complexity.
- **Nature of the Petitioner's Business:** Where the petitioner alleges a unique business model to substantiate specialized or complex duties, explain what separates the petitioner's business operations from others in the industry or the field. Provide a clear comparison and/or contrast of the operational complexity of the petitioner's business with other businesses in the industry or to the norm of other positions in the field.

Clarify what it is about the petitioner's business that is so specialized, distinctive and /or exceptional that it requires the services of an individual with a degree in a specific field of study even though it is not an industry minimum standard.

Provide documentary examples such as press releases, business plans, promotional materials, advertisements, patents, critical reviews, articles, photographs of prototypes, etc. that substantiate claims of complexity and specialization above that experienced in the industry or the field.

## SAMPLE ANALYSIS:

- Letters of recognition of expertise in the specialty occupation were not from recognized authorities in the same specialty occupation.

The petitioner is an import/export business. It employs 25 people and has a gross annual income of over \$4,000,000. It seeks to temporarily employ the beneficiary as a systems analyst for a period of three years.

As the proffered position is a systems analyst, the beneficiary must possess a baccalaureate degree, or its equivalent, in computer science or management information systems.

The petitioner has not demonstrated that the beneficiary's education and experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation under 8 C.F.R. 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). The only category under which the beneficiary could qualify would be 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

Counsel submitted three expert letters from alleged recognized authorities in the same specialty occupation. The first letter is from Jay Moon, CEO of Newmerica Technology, who holds a Master of Science Degree in Computer Information Systems. He stated that the beneficiary completed coursework to achieve her Microsoft Certified Network Engineer and Cisco Certified Network Associate ratings. He also stated the she is qualified for a "task where comprehensive network knowledge is required . . . . [S]he has an ability to do the task for network system analyst." Mr. Moon was the program Director of the facility where the beneficiary received her training.

The second letter is from Jong Wha Lee, a colleague for about one year at Tele-Com Art in Korea. Jong Wha Lee stated that she and the beneficiary worked at "computer educational programming but also at managing the company's computer system." Jong Wha Lee has a Bachelor's Degree in Computer Science from Seoul Seoil University.

The third letter is from Mee Hee Jeong, an administrator at the Narae Fine Art Academy where the beneficiary worked from July 1992 to February 1995 as a teacher in "computer education, taught basic knowledge of hardware and software, developed the academy operation and management program (for registration, attendance check, students' record filing and academy affairs etc.). She was in charge of computer system development and troubleshooting for the academy computers. " Mee Hee Jeong has a Bachelor's Degree in Applied Fine Arts.

Pursuant to the regulations, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentations referenced at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v). Counsel did not submit any evidence to support the beneficiary's eligibility under this regulation other than the three letters, which are considered under 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i). This standard required "[r]ecognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation." The letter from Mr. Moon would qualify under this standard; however, the other two letters are not from "recognized authorities" and, therefore, cannot be used to document the beneficiary's experience.



#### SAMPLE ANALYSIS 5:

- Variety of skills and abilities does not equal complex or unique.

As an alternative to demonstrating that the degree requirement is common to the industry in parallel positions among similar organizations, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. 8 C.F.R. 214.2(h)(4)(iii)(A)(2).

Despite counsel's assertions, the record fails to establish that the proffered position is either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform it.

The duties, as enumerated and described in the record, require a spectrum of skills and abilities, including, but not limited to: write clearly, effectively, and creatively; develop communication tools to inform and persuade various audience sets; develop proposals and other work products based upon a strong understanding of the Internet; develop effective communication and marketing strategies for the petitioner's customer base; write coherent and methodical instructional and technical manuals; employ a working knowledge of vector-based design packages; develop and maintain an Internet-based newsletter; edit; supervise and guide a team of junior copywriters and market research analysts for collection of data for newsletter articles; improve the creative content of the petitioner's Internet site; compile reports and make recommendations on improving the petitioner's services research, partly through supervision and guidance of market research analysts; make recommendations for the purchase of new Internet technology; analyze and make recommendations about the feasibility of acquiring web modules; enhance customer brand loyalty through web-customization and personalization; and tailor marketing messages to customer usage patterns.

While the duties are multiple and diverse, they do not comprise a position that is especially complex or unique. The petitioner's duty descriptions and its assessment of work-time allocations clearly show that the beneficiary's primary involvements would be in effective writing and in Internet marketing management. These functions do not require a degree in any specific specialty. Likewise, the record indicates that knowledge required for the Internet aspects of the position can be attained by work experience, coursework short of a college degree, or a combination of both.

## SAMPLE ANALYSIS 5:

### Different job duties:

- Job duties in ads are more complex than the proffered position

USCIS may also consider 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." 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)).

Although the petitioner submitted two job listings, neither of the listings is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. The petitioner has not demonstrated that the job duties in the proffered position are as complex as those listed in the advertised positions. For example, the duties of the job listings include "budgeting, training, supervising staff, monitoring and managing business growth . . ."

In addition, the petitioner submitted no documentation that any professional association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms routinely employ and recruit only degreed individuals. Accordingly, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations under the second criterion of 8 C.F.R. 214.2(h)(4)(iii)(A).

#### SAMPLE ANALYSIS 7:

- A Physical Therapist permitted to work as a Physical Therapy Aide under a licensed Physical Therapist is not a specialty occupation.

The petitioner is a rehabilitation center which seeks to employ the beneficiary as a physical therapist for a period of three years.

Counsel asserts that the beneficiary is qualified to practice physical therapy in California.

The beneficiary does not hold a license to practice physical therapy in California. Counsel asserts that the beneficiary may practice physical therapy under the supervision of a licensed physical therapist. However, the Physical Therapy Board of California sent a letter to the beneficiary which states in part:

"You are not authorized to work as a physical therapist license applicant. However, you may work as an aide ..."

The Department of Labor's Occupational Outlook Quarterly (Summer 1994), in an article discussing physical therapy assistants and aides, finds no requirement of a baccalaureate degree in any field of study for employment as a physical therapy aide. In view of the foregoing, the petition may not be approved.

**PRIVATE CONSULTANT, NOT AUTHORIZED TO GRANT COLLEGE CREDIT**

**DELETE ALL HIGHLIGHTED DIRECTIVES AND DIALOGUE BOXES BEFORE  
PRINTING**

- To delete boxes, right click on the little box that appears in the upper left corner and cut. -

**OLIVE DATA BASE:** The CSC has been granted access to the OLIVE database from the Department of State. The OLIVE database is a useful tool in detecting fraudulent Indian engineering degrees. The OLIVE database is for the state of Andhra Pradesh and has data from 1993 - present for all engineering students who have graduated from the state.

For more information go to the Adjudicative Tools folder within this directory.

DO NOT go straight to a denial if the OLIVE database fails to show the beneficiary. Because this is third party information an intent-to-deny (ITD) or a request for evidence (RFE), allowing the beneficiary to rebut this information is required. Appropriate language in the RFE or ITD may include the following:

An inquiry with the United States Department of State fails to reveal a record that the beneficiary, [Insert full name], ever attended [insert college or university name].

Important: NEVER reference the OLIVE database (or any in-house sources of information, e.g., Choicepoint) in an ITD or RFE. Merely indicating that the DOS inquiry (or in the case of Choicepoint – a search of public records) is the source of the third party information should suffice.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, to classify the alien beneficiary as a specialty occupation worker with the United States Citizenship and Immigration Services ("USCIS") under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act ("INA" or "Act").

The petitioner is a [City, State] [non-profit OR for-profit] enterprise engaged in [nature of petitioner's business] with [number] employees and a gross annual income of \$ [amount]. It seeks to temporarily employ the beneficiary as [a, an] [position] for a period of [number] years.

**ISSUE:**

The overarching issue to be discussed here is whether the beneficiary is qualified to perform

ATTACHMENT TO I-292

services in a specialty occupation.

**RULE:**

INA 101(a)(15)(H)(i)(b) provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation:

an alien...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)...with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1)....

Section 214(i)(1) of the Act defines the term "specialty occupation" as one that requires:

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

Section 214(i)(2) of the Act outlines the fundamental requirements to qualify to perform a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)(i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to Title 8, Code of Federal Regulations ("8 C.F.R.") 214.2(h)(4) (iii)(C) the beneficiary 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 certificate 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.

The first issue to be considered in determining whether the beneficiary qualifies for the classification is whether s/he meets any of the criteria listed above in 8 C.F.R. 214.2(h)(4)(iii)(C)(1)-(3).

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The beneficiary does not hold a degree from a United States 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.

[Choose Appropriate Statement:]

The beneficiary does not appear to have any university studies.

Or

The record indicates that the beneficiary studied for approximately [Choose approximate amount of education acquired by the beneficiary, e.g.: one semester, one year, two years, three years,...etc.] in a post-secondary setting, but does not establish that the beneficiary holds a foreign degree equivalent to a United States baccalaureate or higher degree in the field of [Insert Field Of Education: e.g., ...Accounting...Market Research Analysis...Computer Analysis....etc.] as required by the proffered position described by the petitioner.

3. Hold an unrestricted State license, registration, or certification which authorized him or her to fully practice the specialty occupation and be

ATTACHMENT TO I-292

**immediately engaged in that specialty in the state of intended employment.**

This occupation does not require a State license, registration, or certification.

**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.**

The petitioner is attempting to show that the beneficiary possesses education, specialized training, and/or progressively responsible experience that is equivalent to completion of a U.S. baccalaureate or higher degree in the specialty occupation. This is the only criterion that the beneficiary could possibly meet.

The second issue to be discussed is whether the beneficiary qualifies under 8 C.F.R. 214.2(h)(4)(iii)(D).

In considering whether the beneficiary qualifies under this category by virtue of his or her education, practical experience and/or specialized training, 8 C.F.R. 214.2(h)(4)(iii)(D) states:

For purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following: (Emphasis added)

- (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 (PONS);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant

certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

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

Further, 8 C.F.R. 214.2(h)(4)(ii) defines a "recognized authority" as follows:

...a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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.

The petitioner did not show that degree equivalency was being sought for the beneficiary based on the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program ("CLEP"), or Program on Non-collegiate Sponsored Instruction ("PONSII").

Further, the petitioner did not show that degree equivalency was being sought for the beneficiary based on 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.

Also, the petitioner is not showing that degree equivalency was being sought for the beneficiary based on 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.

**Choose Appropriate Statement for Foreign Education Evaluation:**

**[Optional Statement #1:]** Also, the petitioner did not show that degree equivalency was being sought for the beneficiary based on an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials.

**Or**

**[Optional Statement #2:]** Although the petitioner submitted an evaluation from a foreign educational credentials evaluator to show that degree equivalency was being sought for the beneficiary based on the beneficiary's foreign education, training, and/or experience, foreign educational credentials evaluators may only evaluate an individual's foreign educational credentials - not training or work experience. Foreign education credentials evaluators do not have the authority to grant college-level credit for training and/or experience in the

ATTACHMENT TO I-292

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 by the regulation. 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

In the evaluation, the foreign educational credentials evaluator determined that the beneficiary's foreign education is equivalent to [Insert the Amount of College Credit Earned, e.g. one semester, one year, two years, three years... Etc.] from an accredited college or university in the United States. This part of the evaluation, that is, the evaluation of the beneficiary's foreign education, is accepted.

However, the USCIS does not accept the assessment of the beneficiary's work experience and other training because, as previously stated, foreign education credentials evaluators are not qualified to make that assessment. Furthermore, foreign educational credentials evaluators are not considered as recognized authorities for the purpose of qualifying aliens under recognition of expertise.

Since the foreign educational credentials evaluation indicated that the beneficiary had less than a baccalaureate level of education in a field of study required by the proffered position, the USCIS requested that the petitioner provide additional evidence to show degree equivalency based on the beneficiary's training and/or work experience as provided in 8 C.F.R. 214.2(h)(4)(iii)(D)(1), (2), and (4) above.

[End Optional Statements for Foreign Education Evaluation]

The petitioner submitted an evaluation of training and/or experience from a private educational evaluation service that was completed by a consultant who asserts to having the authority to grant college level credit at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience to show degree equivalency for the beneficiary.

Although the petitioner has submitted a letter from [Insert name of the College or University: \_\_\_\_\_] that claims that [Insert Evaluator's Name: Dr. or Professor.....] has the authority to grant the college-level credit for various [Choose One or Both:...graduate and...Or...undergraduate...] degree programs in the Division of [Insert Field Of Study: e.g., ...Business and Accounting...Computer Science...Electronics...ETC.], the evaluation was not done on behalf of [Insert Name of the College or University]; it was done for a private educational credentials consulting firm. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. 214.2(h)(4)(iii)(D)(3). As such, the [Insert Name of Private Consultant Firm: e.g.,...Morningside...Global Education Group...etc....] evaluation carries no weight in these proceedings. Matter of Sea, Inc., 19 I. & N. Dec. 817 (Comm. 1988).

[Optional Statement:] Even if USCIS had accepted the evaluation, it would be viewed as

problematic. The evidence provided by [Insert Name of the College or University] is very specific as to the areas in which [Insert The Evaluator's Name: Dr...or...Professor .....] can grant college-level credit for training and/or experience in the field of [Insert Field of Study: e.g., ...Business Administration...Accounting...Computer Science...Electronics...ETC.]. Those areas are for credit for [Choose One or Add Your Own:...co-op and/or internship programs...the waiver of courses offered by the college...substitution of courses by independent study project...waiver of a computer skill course for students if a student's training/work experience is adequate...etc.....]. These specific areas do not appear to cover the granting of extensive college-level credits based on work experience.

[Optional Statement:] Furthermore, the evaluator has not provided sufficient evidence to establish his/her credentials to determine educational equivalency to a bachelor's degree in the particular field of study required for entry into the occupation. The evaluator holds a bachelor's degree in [ ]. However, the particular field of study required to perform the duties of the proffered position is [ ], or a related field.

Since the burden of proof to establish eligibility for the benefit sought rests with petitioner who seeks to accord beneficiary's classification, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I. & N. Dec. 190 (Reg. Comm. 1972)

As such, the record fails to establish that the beneficiary is a member of any organizations whose usual requirement for entry is a baccalaureate degree in a specialized field of study. Further, the record contains no evidence that the beneficiary holds a state license, registration, or certification that authorizes him or her to practice a specialty occupation.

Moreover, the petitioner has not demonstrated that the beneficiary's training and work experience qualifies as the equivalent of a baccalaureate level of education or higher pursuant to 8 C.F.R. 214(h)(4)(iii)(D)(1), (2), (3), or (4). As such, the only category remaining under which the beneficiary might possibly qualify would be 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

#### **Evaluation of experience by USCIS**

When the petitioner fails to establish that the beneficiary's training and work experience qualifies as the equivalent of a baccalaureate level of education or higher pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(1), the USCIS may make its own independent assessment of the beneficiary's credentials.

In its independent assessment of the beneficiary's past employment experience for equivalency to the attainment of a baccalaureate or higher degree or its equivalent, the USCIS is guided by the regulations at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) as previously shown above.

Sample Analysis Item #1:

Letters of Work Experience - Inadequate

The petitioner submitted employment experience letters from the beneficiary's former employers. However, the evidentiary weight of these employment letters is minimal, at best.

Generally, the beneficiary's employment experience letters provide only the beneficiary's job title with dates to establish the duration of the beneficiary's employment. The letters do not provide sufficient details regarding the nature or size of the enterprises where the beneficiary claims to have been employed.

Additionally, the letters do not provide sufficient detail concerning the duties, responsibilities, or supervisory role the beneficiary had while working for these past employers.

Further, the writers of these letters have not provided sufficient evidence to show that the beneficiary's work experience included the theoretical and practical application of complex specialized knowledge required by the specialty occupation or 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. Merely stating that the beneficiary has such work experience is not sufficient to satisfy this requirement.

[Optional Statement:] Also, the record provides insufficient evidence to establish that the author(s) of the letter(s) actually worked with the beneficiary during the time of the claimed employment.

[Optional Statement:] Additionally, it should be noted that the employment experience letters provided by the petitioner are written on plain paper rather than on the claimed former employer's company letterhead stationery. As such, it is not possible to determine whether these letters were actually written by the claimed employers.

Sample Analysis Item #2:

Certificates of Technical Skill - Inadequate

The petitioner has submitted certificates of technical skill level issued to the beneficiary by [Organization:] for [Skill:]. However, these certificates alone are insufficient to establish the duration and academic level of the training courses attended.

Sample Analysis Item #3:

**Inadequate Evaluation - Transcripts not Included in Record**

The evaluation provided is insufficient to establish the claimed equivalency in the specific specialty because the record does not include complete transcripts of courses or supplemental information with regard to the beneficiary's training courses, to determine the duration of such courses and the academic level of the same courses.

**Sample Analysis Item #4:**

**Inadequate Evaluation - A Resume Alone is Insufficient**

An acceptable evaluation should describe the material evaluated and establish that the areas of experience are related to the specialty. A resume or curriculum vitae alone is insufficient to satisfy equivalency of a baccalaureate level of education based on training and/or experience. In this case, it appears that the evaluation is based, to a large extent, on a copy of the beneficiary's resume and is insufficient to establish equivalency in the claimed specific specialty.

**End Analysis**

Without supplemental information, it is not possible to determine how the evaluator reached his/her conclusion that the beneficiary has the equivalent of a U.S. baccalaureate or higher degree in the claimed specialty occupation.

**No Recognition of Expertise**

In addition to establishing equivalency, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentation shown in 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v), as follows:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

The petitioner did not submit sufficient evidence to support the beneficiary's eligibility under this regulation.

**[Optional Statement #1]** The previously mentioned letters from former employers, which are considered under 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i), were found inadequate.

**[Optional Statement #2 – Use if petitioner claims foreign education evaluator is an expert but the record does not show the evaluator is a “Recognized Authority”]** The evaluation provided by the foreign educational credentials evaluator is not sufficient to establish recognition of expertise because, as previously stated, they are not considered recognized

authorities for the purpose of qualifying under recognition of expertise. In this case the evaluator does not hold a degree in the field related to the proffered position. Also, the record does not establish the evaluator's qualifications as an expert, his or her experience giving such opinions that have been accepted as authoritative and by whom, and the basis for conclusions supported by copies of citations of any research material as required in 8 C.F.R. 214.2(h)(4)(ii).

**(ii) Membership in a recognized foreign or United States association or society in the specialty occupation:**

The petitioner did not submit any evidence to establish that the beneficiary is the member of any organizations whose usual requirement for entry is a baccalaureate degree in a specialized field of study to establish his/her recognition of expertise in the field of study required by the proffered position.

**(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers:**

The petitioner did not submit sufficient evidence to establish that there has ever been any published material by or about the beneficiary to establish his/her recognition of expertise in the field of study required by the proffered position.

**(iv) Licensure or registration to practice the specialty occupation in a foreign country; or**

The petitioner did not submit any evidence to establish that the beneficiary is licensed or registered to practice in the proffered position.

**(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.**

The petitioner did not submit any evidence from a recognized authority who has determined that the beneficiary's achievements in the field of the specialty occupation are significant.

**[Optional Statement – Use if petitioner claims foreign education evaluator is an expert but the record does not show the evaluator is a “Recognized Authority”]** The evaluation provided by the foreign educational credentials evaluator is not sufficient to establish recognition of expertise because, as previously stated, they are not considered recognized authorities for the purpose of qualifying under recognition of expertise. In this case the evaluator does not hold a degree in the field related to the proffered position. Also, the record does not establish the evaluator's qualifications as an expert, his or her experience giving such opinions that have been accepted as authoritative and by whom, and the basis

for conclusions supported by copies of citations of any research material as required in 8 C.F.R. 214.2(h)(4)(ii).

As such, the petitioner has not established that the beneficiary qualifies to perform the services of the specialty occupation through equivalency to completion of a United States baccalaureate or higher degree in the specialty occupation based on education, training and/or employment experience pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D). Therefore, the beneficiary is ineligible for classification as an alien employed in a specialty occupation.

**CONCLUSION:**

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

**One Issue Denial**

Consequently, the petition is denied for the above stated reason.

**Multiple Issue Denial**

Consequently, the petition is denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

**FOREIGN EDUCATION EVALUATION, UNRELATED FIELD**

**DELETE ALL HIGHLIGHTED DIRECTIVES AND DIALOGUE BOXES BEFORE  
PRINTING**

- To delete boxes, right click on the little box that appears in the upper left corner and cut. -

**OLIVE DATA BASE:** The CSC has been granted access to the OLIVE database from the Department of State. The OLIVE database is a useful tool in detecting fraudulent Indian engineering degrees. The OLIVE database is for the state of Andhra Pradesh and has data from 1993 - present for all engineering students who have graduated from the state.

For more information go to the Adjudicative Tools folder within this directory.

DO NOT go straight to a denial if the OLIVE database fails to show the beneficiary. Because this is third party information an intent-to-deny (ITD) or a request for evidence (RFE), allowing the beneficiary to rebut this information is required. Appropriate language in the RFE or ITD may include the following:

An inquiry with the United States Department of State fails to reveal a record that the beneficiary, [Insert full name], ever attended [insert college or university name].

Important: NEVER reference the OLIVE database (or any in-house sources of information, e.g., Choicepoint) in an ITD or RFE. Merely indicating that the DOS inquiry (or in the case of Choicepoint – a search of public records) is the source of the third party information should suffice.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, to classify the alien beneficiary as a specialty occupation worker with the United States Citizenship and Immigration Services ("USCIS") under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act ("INA" or "Act").

The petitioner is a [City, State] [non-profit OR for-profit] enterprise engaged in [nature of petitioner's business] with [number] employees and a gross annual income of \$ [amount]. It seeks to temporarily employ the beneficiary as [a, an] [position] for a period of [number] years.

**ISSUE:**

The overarching issue to be discussed here is whether the beneficiary is qualified to perform

ATTACHMENT TO I-292



services in the specialty occupation.

**RULE:**

INA 101(a)(15)(H)(i)(b) provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation:

an alien...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)...with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1)....

Section 214(i)(1) of the Act defines the term "specialty occupation" as one that requires:

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

Section 214(i)(2) of the Act outlines the fundamental requirements to qualify to perform a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)(i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C) the beneficiary 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 certificate 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.

The first issue to be considered in determining whether the beneficiary qualifies for the classification is whether s/he meets any of the criteria listed above in 8 C.F.R. 214.2(h)(4)(iii)(C)(1)-(3).

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The beneficiary does not hold a degree from a United States 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.

Although it appears that the beneficiary has studied for approximately four or more years in a post-secondary setting, he or she does not hold a foreign degree equivalent to a United States baccalaureate or higher degree in the field of [Insert Field of Education: e.g., ...Accounting...Market Research Analysis...Computer Analysis.... etc.] as required by the proffered position described by the petitioner.

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

This occupation does not require a State license, registration, or certification.

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.

The petitioner is attempting to show that the beneficiary possesses education, specialized training, and/or progressively responsible experience that is equivalent to completion of a U.S. baccalaureate or higher degree in the specialty occupation. This is the only criterion that the beneficiary could possibly meet.

The second issue to be discussed is whether the beneficiary qualifies under 8 C.F.R. 214.2(h)(4)(iii)(D).

In considering whether the beneficiary qualifies under this category by virtue of his or her education, practical experience and/or specialized training, 8 C.F.R. 214.2(h)(4)(iii)(D) states:

For purposes of paragraph (h)(4)(iii)(C)((4)) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following: (Emphasis added)

- (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 (PONS);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated

for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

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

Further, 8 C.F.R. 214.2(h)(4)(ii) defines a "recognized authority" as:

...a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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.

The petitioner did not show that degree equivalency was being sought for the beneficiary based on the results of 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.

Also, the petitioner did not show that degree equivalency was being sought for the beneficiary based on the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program ("CLEP"), or Program on Non-collegiate Sponsored Instruction ("PONSI").

Additionally, the petitioner did not show that degree equivalency was being sought for the beneficiary based on 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.

Further, the petitioner is not showing that degree equivalency was being sought for the beneficiary based on a determination by the USCIS 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.

The petitioner is attempting to show that degree equivalency is being sought for the beneficiary based, in whole or in part, on an evaluation of the beneficiary's training and experience from a foreign educational credentials evaluator.

The petitioner seeks to employ the beneficiary as a [Insert Position Title, e.g.,...systems analyst...].

Since the proffered position is a [Insert Position Title, e.g.,...systems analyst...] the beneficiary must possess a baccalaureate degree or higher, or its equivalent, in the appropriate field of study such as [Insert Field of Study, e.g., ...computer science or management information systems...] as shown in the Department of Labor's Occupational Outlook Handbook (OOH)

The evaluation of the beneficiary's foreign education, prepared by a foreign educational credentials evaluator claims that the beneficiary has the equivalent of a bachelor's degree in [Insert Field of Study, e.g. computer science Or management information systems, etc.] as a result of education, training, and/or employment experience.

However, foreign educational credentials evaluators may only evaluate an individual's

foreign educational credentials - not training or work experience. Foreign educational credentials evaluators are not qualified to prepare evaluations based on the beneficiary's training and/or work experience as they do not have, "...the 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 by the regulation. 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

On the other hand, a foreign educational credentials evaluator is qualified to provide an evaluation of the beneficiary's foreign education pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(3) which authorizes, "An evaluation of education by a reliable credentials evaluation service which specialized in evaluating foreign educational credentials."

In the evaluation, the foreign educational credentials evaluator determined that the beneficiary's foreign education is equivalent to a bachelor's degree in [Insert the unrelated degree earned, e.g. French...English...Literature...History...Art Appreciation...etc.] from an accredited college or university in the United States. This part of the evaluation, that is, the evaluation of the beneficiary's foreign education, is accepted.

However, the education evaluated is not in a field of study related to the specific education required for the beneficiary to perform the duties of the proffered position. Additionally, the USCIS does not accept the assessment of the beneficiary's work experience and other training because, as previously stated, foreign education credentials evaluators are not qualified to make that assessment. Furthermore, foreign educational credentials evaluators are not considered as recognized authorities for the purpose of qualifying aliens under recognition of expertise.

Subsequent to the filing of the petition, the USCIS requested that the petitioner provide additional evidence to show degree equivalency based on the beneficiary's training and/or work experience as provided in 8 C.F.R.214.2(h)(4)(iii)(D)(1), (2), and (4) above.

In its response, the petitioner did not provide the requested evidence.

[Or...Optional Statement:] In its response, the petitioner asserts that the beneficiary's foreign credentials evaluation should be accepted by USCIS pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(3), as they are from a reliable credentials evaluation service.

**NOTE TO ADJUDICATOR:** If the petitioner did provide an evaluation from a college official or someone who claims to be - use one of those denial formats.

The USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is any way questionable, it may be discounted or given less weight. Matter of

Sea, Inc., 19 I. & N. 817 (Comm. 1988). The evaluation will, accordingly, be given little weight.

As such, the record fails to establish that the beneficiary is a member of any organizations whose usual requirement for entry is a baccalaureate degree in a specialized field of study. Further, the record contains no evidence that the beneficiary holds a state license, registration, or certification that authorizes him or her to practice a specialty occupation.

Moreover, the petitioner has not demonstrated that the beneficiary's education in an "unrelated field" and work experience are equivalent to completion of a United States baccalaureate or higher degree in the claimed specialty occupation under 8 C.F.R. 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). The only category remaining under which the beneficiary might possibly qualify would be 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

#### **Evaluation of experience by USCIS**

When the petitioner fails to establish that the beneficiary's training and work experience qualifies as the equivalent of a baccalaureate level of education or higher pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(1) - (4), the USCIS may make its own independent assessment of the beneficiary's credentials.

In its independent assessment of the beneficiary's past employment experience for equivalency to the attainment of a baccalaureate or higher degree or its equivalent, the USCIS is guided by the regulations at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) shown above.

#### **Sample Analysis Item #1:**

#### **Letters of Work Experience - Inadequate**

The petitioner submitted employment experience letters from the beneficiary's former employers. However, the evidentiary weight of these employment letters is minimal, at best.

Generally, the beneficiary's employment experience letters provide only the beneficiary's job title with dates to establish the duration of the beneficiary's employment. The letters do not provide sufficient details regarding the nature or size of the enterprises where the beneficiary claims to have been employed.

Additionally, the letters do not provide sufficient detail concerning the duties, responsibilities, or supervisory role the beneficiary had while working for these past employers.

Further, the writers of these letters have not provided sufficient evidence to show that the beneficiary's work experience included the theoretical and practical application of complex

ATTACHMENT TO I-292

specialized knowledge required by the specialty occupation or 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. Merely stating that the beneficiary has such work experience is not sufficient to satisfy this requirement.

[Optional Statement:] Additionally, the record provides insufficient evidence to establish that the author(s) of the employment letter(s) actually worked with the beneficiary during the time of the claimed employment.

[Optional Statement:] Moreover, it should be noted that the employment experience letters provided by the petitioner are written on plain paper rather than on the claimed former employer's company letterhead stationery. As such, it is not possible to determine whether these letters were actually written by the claimed employers.

#### Sample Analysis Item #2

##### Certificates of Technical Skill - Inadequate

The petitioner has submitted certificates of technical skill level issued to the beneficiary by [Organization:] for [Skill:]. However, these certificates alone are insufficient to establish the duration and academic level of the training courses attended in order to obtain the certificates in the particular technical skill.

#### Sample Analysis Item #3

##### Inadequate Evaluation – Transcripts not included in Record

The evaluation provided is insufficient to establish the claimed equivalency in the specific specialty because the record does not include complete transcripts of courses or supplemental information with regard to the beneficiary's training courses, to determine the duration of such courses and the academic level of the same courses.

#### Sample Analysis Item #4

##### Inadequate Evaluation - A Resume alone is Insufficient

An acceptable evaluation should describe the material evaluated and establish that the areas of experience are related to the specialty. A resume or curriculum vitae, alone, is insufficient to satisfy equivalency of a baccalaureate level of education based on training and/or experience. In this case, it appears that the evaluation is based, to a large extent, on a copy of the beneficiary's resume and is insufficient to establish equivalency in the claimed specific specialty.



**End Analysis**

Without supplemental information, it is not possible for the USCIS to determine that the beneficiary has the equivalent of a U.S. baccalaureate or higher degree in the claimed specialty occupation.

**No Recognition of Expertise**

In addition to establishing equivalency, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentation shown in 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v), as follows:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation.**

The petitioner did not submit sufficient evidence to support the beneficiary's eligibility under this regulation.

**[Optional Statement #1]** The previously mentioned letters from former employers, which are considered under 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i), were found inadequate.

**[Optional Statement #2 – Use if petitioner claims foreign education evaluator is an expert but the record does not show the evaluator is a “Recognized Authority”]** The evaluation provided by the foreign educational credentials evaluator is not sufficient to establish recognition of expertise because, as previously stated, they are not considered recognized authorities for the purpose of qualifying under recognition of expertise. In this case the evaluator does not hold a degree in the field related to the proffered position. Also, the record does not establish the evaluator's qualifications as an expert, his or her experience giving such opinions that have been accepted as authoritative and by whom, and the basis for conclusions supported by copies of citations of any research material as required in 8 C.F.R.214.2(h)(4)(ii).

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation.**

The petitioner did not submit any evidence to establish that the beneficiary is the member of any organizations whose usual requirement for entry is a baccalaureate degree in a specialized field of study to establish his/her recognition of expertise in the field of study required by the proffered position.

- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers.**

The petitioner did not submit sufficient evidence to establish that there has ever been any published material by or about the beneficiary to establish his/her recognition of expertise in the field of study required by the proffered position.

**(iv) Licensure or registration to practice the specialty occupation in a foreign country.**

The petitioner did not submit any evidence to establish that the beneficiary is licensed or registered to practice in the proffered position.

**(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.**

The petitioner did not submit any evidence from a recognized authority who has determined that the beneficiary's achievements in the field of the specialty occupation are significant.

[Optional Statement – Use if petitioner claims foreign education evaluator is an expert but the record does not show the evaluator is a “Recognized Authority”] The evaluation provided by the foreign educational credentials evaluator is not sufficient to establish recognition of expertise because, as previously stated, they are not considered recognized authorities for the purpose of qualifying under recognition of expertise. In this case the evaluator does not hold a degree in the field related to the proffered position. Also, the record does not establish the evaluator's qualifications as an expert, his or her experience giving such opinions that have been accepted as authoritative and by whom, and the basis for conclusions supported by copies of citations of any research material as required in 8 C.F.R. 214.2(h)(4)(ii).

As such, the petitioner has not established that the beneficiary qualifies to perform the services of the specialty occupation through equivalency to completion of a United States baccalaureate or higher degree in the specialty occupation based on education, training and/or employment experience pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D). Therefore, the beneficiary is ineligible for classification as a specialty occupation worker, and, therefore, the petition may not be approved.

**CONCLUSION:**

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

**One Issue Denial**

Consequently, the petition is denied for the above stated reason.

ATTACHMENT TO I-292

Multiple Issue Denial

Consequently, the petition is denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

**FOREIGN EDUCATION EVALUATION, NO EQUIVALENCY**

**DELETE ALL HIGHLIGHTED DIRECTIVES AND DIALOGUE BOXES BEFORE  
PRINTING**

To delete boxes, right click on the little box that appears in the upper left corner and cut.

**OLIVE DATA BASE:** The CSC has been granted access to the OLIVE database from the Department of State. The OLIVE database is a useful tool in detecting fraudulent Indian engineering degrees. The OLIVE database is for the state of Andhra Pradesh and has data from 1993 – present for all engineering students who have graduated from the state.

For more information go to the Adjudicative Tools folder within this directory.

DO NOT go straight to a denial if the OLIVE database fails to show the beneficiary. Because this is third party information an intent-to-deny (ITD) or a request for evidence (RFE), allowing the beneficiary to rebut this information is required. Appropriate language in the RFE or ITD may include the following:

An inquiry with the United States Department of State fails to reveal a record that the beneficiary, [Insert full name], ever attended [insert college or university name].

Important: NEVER reference the OLIVE database (or any in-house sources of information, e.g., Choicepoint) in an ITD or RFE. Merely indicating that the DOS inquiry (or in the case of Choicepoint – a search of public records) is the source of the third party information should suffice.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, to classify the alien beneficiary as a specialty occupation worker with the United States Citizenship and Immigration Services ("USCIS") under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act ("INA" or "Act").

The petitioner is a [City, State] [non-profit OR for-profit] enterprise engaged in [nature of petitioner's business] with [number] employees and a gross annual income of \$ [amount]. It seeks to temporarily employ the beneficiary as [a, an] [position] for a period of [number] years.

**ISSUE:**

The overarching issue to be discussed here is whether the beneficiary is qualified to perform

ATTACHMENT TO I-292

services in a specialty occupation.

**RULE:**

INA 101(a)(15)(H)(i)(b) provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation:

an alien...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)...with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1)....

Section 214(i)(1) of the Act defines the term "specialty occupation" as one that requires:

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

Section 214(i)(2) of the Act outlines the fundamental requirements to qualify to perform a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)(i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4) (iii)(C) the beneficiary 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 certificate 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.

The first issue to be considered in determining whether the beneficiary qualifies for the classification is whether s/he meets any of the criteria listed above in 8 C.F.R. 214.2(h)(4)(iii)(C)(1)-(3).

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The beneficiary does not hold a degree from a United States 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.

The record indicates that the beneficiary studied for approximately [Choose approximate amount of education acquired by the beneficiary, e.g.: one semester, one year, two years, three years...etc.] in a post-secondary setting, but does not establish that the beneficiary holds a foreign degree equivalent to a United States baccalaureate or higher degree in the field of [Insert Field of Education: e.g., ... Accounting... Market Research Analysis... Computer Analysis.... etc.] as required by the proffered position described by the petitioner.

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

This occupation does not require a State license, registration, or certification.

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.**

The petitioner is attempting to show that the beneficiary possesses education, specialized training, and/or progressively responsible experience that is equivalent to completion of a U.S. baccalaureate or higher degree in the specialty occupation. This is the only criterion that the beneficiary could possibly meet.

The second issue to be discussed is whether the beneficiary qualifies under 8 C.F.R. 214.2(h)(4)(iii)(D).

In considering whether the beneficiary qualifies under this category by virtue of his or her education, practical experience and/or specialized training, 8 C.F.R. 214.2(h)(4)(iii)(D) states:

For purposes of paragraph (h)(4)(iii)(C)((4)) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following: (Underlining added)

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes

of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

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

Further, 8 C.F.R. 214.2(h)(4)(ii) defines a "recognized authority" as:

...a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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.

The petitioner did not show that degree equivalency was being sought for the beneficiary based on the results of 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.

Also, the petitioner did not show that degree equivalency was being sought for the beneficiary based on the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program ("CLEP"), or Program on Non-collegiate Sponsored Instruction ("PONSII").

Additionally, the petitioner did not show that degree equivalency was being sought for the beneficiary based on 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.

Further, the petitioner is not showing that degree equivalency was being sought for the beneficiary based on a determination by USCIS 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.

The petitioner is attempting to show that degree equivalency is being sought for the beneficiary based, in whole or in part, on an evaluation of the beneficiary's training and experience from a foreign educational credentials evaluator.

The petitioner seeks to employ the beneficiary as a [Insert Position Title].

The evaluation of the beneficiary's foreign education, prepared by a foreign educational credentials evaluator claims that the beneficiary has the equivalent of a bachelor's degree in the specific field of study required by the specialty occupation as a result of education, training, and/or employment experience.

However, foreign educational credentials evaluators may only evaluate an individual's foreign educational credentials - not training or work experience. Foreign educational credentials evaluators are not qualified to prepare evaluations based on the beneficiary's training and/or work experience as they do not have, "...the 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 by the regulation. 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

On the other hand, a foreign educational credentials evaluator is qualified to provide an evaluation of the beneficiary's foreign education pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(3) which authorizes, "An evaluation of education by a reliable credentials evaluation service which specialized in evaluating foreign educational credentials."

In the evaluation, the foreign educational credentials evaluator determined that the beneficiary's foreign education is equivalent to [Insert the amount of college credit earned, e.g. one semester, one year, two years, three years...etc.] from an accredited college or university in the United States. This part of the evaluation, that is, the evaluation of the beneficiary's foreign education, is accepted.

However, the USCIS does not accept the assessment of the beneficiary's work experience and other training because, as previously stated, foreign education credentials evaluators are not qualified to make that assessment. Furthermore, foreign educational credentials evaluators are not considered as recognized authorities for the purpose of qualifying aliens under recognition of expertise.

Subsequent to the filing of the petition, the USCIS requested that the petitioner provide additional evidence to show degree equivalency based on the beneficiary's training and/or work experience as provided in 8 C.F.R. 214.2(h)(4)(iii)(D)(1), (2), and (4) above.

In its response, the petitioner did not provide the requested evidence.

[Or...Optional Statement:] In its response, the petitioner asserts that the beneficiary's foreign credentials evaluation should be accepted by USCIS pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(3), as they are from a reliable credentials evaluation service.

**Note To Adjudicator:** If the petitioner did provide an evaluation from a college official or someone who claims to be – go to one of those denial formats.

The USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. 817 (Comm. 1988). The evaluation will, accordingly, be given minimal weight.

As such, the record fails to establish that the beneficiary is a member of any organizations whose usual requirement for entry is a baccalaureate degree in a specialized field of study. Further, the record contains no evidence that the beneficiary holds a state license,

ATTACHMENT TO I-292

[Optional Statement:] Additionally, the record provides insufficient evidence to establish that the author(s) of the employment letter(s) actually worked with the beneficiary during the time of the claimed employment.

[Optional Statement:] Moreover, it should be noted that the employment experience letters provided by the petitioner are written on plain paper rather than on the claimed former employer's company letterhead stationery. As such, it is not possible to determine whether these letters were actually written by the claimed employers.

Sample Analysis Item #2:

Certificates of Technical Skill - Inadequate

The petitioner has submitted certificates of technical skill level issued to the beneficiary by [Organization] for [Skill]. However, these certificates alone are insufficient to establish the duration and academic level of the training courses attended in order to obtain the certificates in the particular technical skill.

Sample Analysis Item #3:

Inadequate Evaluation – Transcripts not included in Record

The evaluation provided is insufficient to establish the claimed equivalency in the specific specialty because the record does not include complete transcripts of courses or supplemental information with regard to the beneficiary's training courses, to determine the duration of such courses and the academic level of the same courses.

Sample Analysis Item #4:

Inadequate Evaluation – A Resume alone is insufficient

An acceptable evaluation should describe the material evaluated and establish that the areas of experience are related to the specialty. A resume or curriculum vitae, alone, is insufficient to satisfy equivalency of a baccalaureate level of education based on training and/or experience. In this case, it appears that the evaluation is based, to a large extent, on a copy of the beneficiary's resume and is insufficient to establish equivalency in the claimed specific specialty.

End Analysis

Without supplemental information, it is not possible for the USCIS to determine that the beneficiary has the equivalent of a U.S. baccalaureate or higher degree in the claimed specialty occupation.

ATTACHMENT TO I-292

### **No Recognition of Expertise**

In addition to establishing equivalency, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentation shown in 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v), as follows:

**(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation.**

The petitioner did not submit sufficient evidence to support the beneficiary's eligibility under this regulation other than the previously mentioned letters from former employers, which are considered under 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i).

The petitioner did not submit sufficient evidence to support the beneficiary's eligibility under this regulation.

**[Optional Statement #1]** The previously mentioned letters from former employers, which are considered under 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i), were found inadequate.

**[Optional Statement #2 – Use if petitioner claims foreign education evaluator is an expert but the record does not show the evaluator is a “Recognized Authority”]** The evaluation provided by the foreign educational credentials evaluator is not sufficient to establish recognition of expertise because, as previously stated, they are not considered recognized authorities for the purpose of qualifying under recognition of expertise. In this case the evaluator does not hold a degree in the field related to the proffered position. Also, the record does not establish the evaluator's qualifications as an expert, his or her experience giving such opinions that have been accepted as authoritative and by whom, and the basis for conclusions supported by copies of citations of any research material as required in 8 C.F.R.214.2(h)(4)(ii).

**(ii) Membership in a recognized foreign or United States association or society in the specialty occupation.**

The petitioner did not submit any evidence to establish that the beneficiary is the member of any organizations whose usual requirement for entry is a baccalaureate degree in a specialized field of study to establish his/her recognition of expertise in the field of study required by the proffered position.

**(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers.**

The petitioner did not submit sufficient evidence to establish that there has ever been any

ATTACHMENT TO I-292

published material by or about the beneficiary to establish his/her recognition of expertise in the field of study required by the proffered position.

(iv) Licensure or registration to practice the specialty occupation in a foreign country.

The petitioner did not submit any evidence to establish that the beneficiary is licensed or registered to practice in the proffered position.

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The petitioner did not submit any evidence from a recognized authority who has determined that the beneficiary's achievements in the field of the specialty occupation are significant.

[Optional Statement – Use if petitioner claims foreign education evaluator is an expert but the record does not show the evaluator is a “Recognized Authority”] The evaluation provided by the foreign educational credentials evaluator is not sufficient to establish recognition of expertise because, as previously stated, they are not considered recognized authorities for the purpose of qualifying under recognition of expertise. In this case the evaluator does not hold a degree in the field related to the proffered position. Also, the record does not establish the evaluator's qualifications as an expert, his or her experience giving such opinions that have been accepted as authoritative and by whom, and the basis for conclusions supported by copies of citations of any research material as required in 8 C.F.R. 214.2(h)(4)(ii).

As such, the petitioner has not established that the beneficiary qualifies to perform the services of the specialty occupation through equivalency to completion of a United States baccalaureate or higher degree in the specialty occupation based on education, training and/or employment experience pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D). Consequently, the beneficiary is ineligible for classification as an alien employed in a specialty occupation.

#### **FINAL CONCLUSION:**

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

#### **One Issue Denial**

Consequently, the petition is denied for the above stated reason.

Multiple Issue Denial

Consequently, the petition is denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

**EVALUATIONS ARE ADVISORY ONLY.**

**DELETE ALL HIGHLIGHTED DIRECTIVES AND DIALOGUE BOXES BEFORE  
PRINTING**

- To delete boxes, right click on the little box that appears in the upper left corner and cut. -

**NOTE TO ADJUDICATORS:** All of the analyses in this denial have been included in the "Phrases&Analysis" folder – each in its own separate document.

**OLIVE DATA BASE:** The CSC has been granted access to the OLIVE database from the Department of State. The OLIVE database is a useful tool in detecting fraudulent Indian engineering degrees. The OLIVE database is for the state of Andhra Pradesh and has data from 1993 - present of all engineering students who have graduated from the state.

For more information go to the Adjudicative Tools folder within this directory.

DO NOT go straight to a denial if the OLIVE database fails to show the beneficiary. Because this is third party information an intent-to-deny (ITD) or a request for evidence (RFE), allowing the beneficiary to rebut this information is required. Appropriate language in the RFE or ITD may include the following:

An inquiry with the United States Department of State fails to reveal a record that the beneficiary, [Insert full name], ever attended [insert college or university name].

Important: NEVER reference the OLIVE database (or any in-house sources of information, e.g., Choicepoint) in an ITD or RFE. Merely indicating that the DOS inquiry (or in the case of Choicepoint – a search of public records) is the source of the third party information should suffice.

**INTRODUCTION:**

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, to classify the alien beneficiary as a specialty occupation worker with the United States Citizenship and Immigration Services ("USCIS") under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act ("INA" or "Act").

The petitioner is a [City, State] [non-profit OR for-profit] enterprise engaged in [nature of petitioner's business] with [number] employees and a gross annual income of \$ [amount]. It

seeks to temporarily employ the beneficiary as [a, an] [position] for a period of [number] years.

The record indicates that the beneficiary had more than [Number] years of employment experience at the time of the filing of the petition. A credentials evaluator has determined that the beneficiary's education background and employment experience are equivalent to a bachelor's degree in [field of study] awarded by regionally accredited academic colleges and universities in the United States.

**RULE:**

INA 101(a)(15)(H)(i)(b) provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation:

an alien...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)...with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1)....

Section 214(i)(1) of the Act defines the term "specialty occupation" as one that requires:

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

Section 214(i)(2) of the Act outlines the fundamental requirements to qualify to perform a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)(i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.



Pursuant to 8 C.F.R. 214.2(h)(4) (iii)(C) the beneficiary 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 certificate 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.

In considering whether the beneficiary qualifies under this category by virtue of his or her education, practical experience and/or specialized training, 8 C.F.R. 214.2(h)(4)(iii)(D) states:

For purposes of paragraph (h)(4)(iii)(C)((4)) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following: (Underlining added)

- (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 (PONSIS);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

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

8 C.F.R. 214.2(h)(4)(ii) states:

Recognized authority means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to

render the type of opinion requested. Such an 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.

USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. 817 (Comm. 1988). In addition, it was concluded in Sea that experience which is substituted for a portion of education must include the theoretical and practical application of specialized knowledge required at the professional level of the occupation. Ordinary experience alone cannot be equated with a college degree.

SAMPLE ANALYSIS 1 of 7: Evaluation less than what OOH says is required.

Here, the evaluation of the beneficiary's foreign credentials as the equivalent of a baccalaureate degree in business administration is based on employment experience and educational background. A review of the Department of Labor's Occupational Outlook Handbook, however, finds that the graduate education is normally required for the proffered position.

SAMPLE ANALYSIS 2 of 7: Evaluation in different field than what OOH says is required.

The evaluator did not conclude that the beneficiary has graduate education in one of the disciplines listed by the Occupational Outlook Handbook.

SAMPLE ANALYSIS 3 of 7: Conclusory Evaluation - No authorization to issue college credit.

The record does not contain any corroborating evidence to support the evaluator's finding, such as 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, as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

SAMPLE ANALYSIS 4 of 7: Evaluator's credentials in a field other than the one being

evaluated.

The evaluator has not submitted evidence setting for his/her credentials to determine educational equivalency to a bachelor's degree in this particular field of endeavor. The evaluator holds a bachelor's degree in education and a master's degree in educational administration. He/she does not appear to have any education or experience in culinary arts, hotel, and restaurant management, or a related field.

SAMPLE ANALYSIS 5 of 7: Limited authorization to issue college credit.

Although the evaluator states that he/she has the authority and responsibility for the evaluation and granting of college-level credit for all international transfer students, he/she does not specify that he/she is authorized to grant college-level credit for training and/or work experience in the field, nor does he/she indicate that his/her college has a program for granting such credit. Accordingly, the evaluation is accorded little weight.

SAMPLE ANALYSIS 6 of 7: Conclusory Evaluation - No basis for education and experience evaluation.

Here, the evaluation of the beneficiary's foreign credentials is based on education and employment experience. The evaluator has not demonstrated specifically how the evaluation was made nor the basis for making it (including copies of the relevant portions of any research materials used). Neither the petitioner nor the evaluator has demonstrated that the beneficiary's experience was experience in a specialty occupation. In addition, the evaluator has not shown how the various aspects of the beneficiary's employment experience satisfy the course work requirements of a baccalaureate degree in business administration. Accordingly, the evaluation is accorded little weight.

The beneficiary is not a member of any organizations whose usual requirement for entry is a baccalaureate degree in a specialized field of study. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary qualifies to perform services in a specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. INA 291. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

SAMPLE ANALYSIS 7 of 7: Evaluation based on degree in unrelated field plus experience.

The petitioner is an import/export business. It employs 25 people and has a gross annual income of over \$4,000,000. It seeks to temporarily employ the beneficiary as a systems analyst for a period of three years.

ATTACHMENT TO I-292

As the proffered position is a systems analyst, the beneficiary must possess a baccalaureate degree, or its equivalent, in computer science or management information systems.

It is noted that the Evaluation Report prepared by the Foundation for International Services, Inc. (FIS) and submitted with the initial filing of the petition does not meet the standards of the regulations for determining equivalency. The Evaluation purports to determine that the beneficiary has the equivalent of a bachelor's degree in computer science as a result of her education, professional training and employment experience. FIS is not qualified to prepare an evaluation of this sort as it does not: "[H]ave the 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 by the regulation. 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

FIS is qualified to provide an evaluation of the beneficiary's foreign degree pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specialized in evaluating foreign educational credentials." In the evaluation, FIS determined that the beneficiary's foreign degree is equivalent to a bachelor's degree in French and literature from an accredited college or university in the United States. This part of the evaluation is accepted, but USCIS does not accept the assessment of the beneficiary's work experience and other training as FIS is not qualified to make that assessment.

The petitioner has not demonstrated that the beneficiary's education and experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation under 8 C.F.R. 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). The only category under which the beneficiary could qualify would be 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

Counsel submitted three letters in addition to the Evaluation (which has already been discussed and will not be addressed any further). The first letter is from Jay Moon, CEO of Newmerica Technology, who holds a Master of Science Degree in Computer Information Systems. He stated that the beneficiary completed coursework to achieve her Microsoft Certified Network Engineer and Cisco Certified Network Associate ratings. He also stated the she is qualified for a "task where comprehensive network knowledge is required . . . . [S]he has an ability to do the task for network system analyst." Mr. Moon was the program director of the facility where the beneficiary received her training.

The second letter is from Jong Wha Lee, a colleague for about one year at Tele-Com Art in Korea. Jong Wha Lee stated that she and the beneficiary worked at "computer educational programming but also, at managing the company's computer system." Jong Wha Lee has a Bachelor's Degree in Computer Science from Seoul Seoil University.

The third letter is from Mee Hee Jeong, an administrator at the Narae Fine Art Academy

ATTACHMENT TO I-292

where the beneficiary worked from July 1992 to February 1995 as a teacher in "computer education, taught basic knowledge of hardware and software, developed the academy operation and management program (for registration, attendance check, students' record filing and academy affairs etc.). She was in charge of computer system development and troubleshooting for the academy computers. " Mee Hee Jeong has a Bachelor's Degree in Applied Fine Arts.

Pursuant to the regulations, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentations referenced at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v). Counsel did not submit any evidence to support the beneficiary's eligibility under this regulation other than the three letters, which are considered under 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i). This standard required "[r]ecognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation." The letter from Mr. Moon would qualify under this standard; however, the other two letters are not from "recognized authorities" and, therefore, cannot be used to document the beneficiary's experience.

#### **FINAL CONCLUSION:**

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

#### **One Issue Denial**

Consequently, the petition is denied for the above stated reason.

#### **Multiple Issue Denial**

Consequently, the petition is denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

COLLEGE OFFICIAL - NOT AUTHORIZED

DELETE ALL HIGHLIGHTED DIRECTIVES AND DIALOGUE BOXES BEFORE  
PRINTING

- To delete boxes, right click on the little box that appears in the upper left corner and cut. -

**OLIVE DATA BASE:** The CSC has been granted access to the OLIVE database from the Department of State. The OLIVE database is a useful tool in detecting fraudulent Indian engineering degrees. The OLIVE database is for the state of Andhra Pradesh and has data from 1993 - present for all engineering students who have graduated from the state.

For more information go to the Adjudicative Tools folder within this directory.

DO NOT go straight to a denial if the OLIVE database fails to show the beneficiary. Because this is third party information an intent-to-deny (ITD) or a request for evidence (RFE), allowing the beneficiary to rebut this information is required. Appropriate language in the RFE or ITD may include the following:

An inquiry with the United States Department of State fails to reveal a record that the beneficiary, [Insert full name], ever attended [insert college or university name].

Important: NEVER reference the OLIVE database (or any in-house sources of information, e.g., Choicepoint) in an ITD or RFE. Merely indicating that the DOS inquiry (or in the case of Choicepoint – a search of public records) is the source of the third party information should suffice.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, to classify the alien beneficiary as a specialty occupation worker with the United States Citizenship and Immigration Services ("USCIS") under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act ("INA" or "Act").

The petitioner is a [City, State] [non-profit OR for-profit] enterprise engaged in [nature of petitioner's business] with [number] employees and a gross annual income of \$ [amount]. It seeks to temporarily employ the beneficiary as [a, an] [position] for a period of [number] years.

**ISSUE:**

The overarching issue to be discussed here is whether the beneficiary is qualified to perform

ATTACHMENT TO I-292

services in the specialty occupation.

**RULE:**

INA 101(a)(15)(H)(i)(b) provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation:

an alien . . . who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . . with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1) . . .

Section 214(i)(1) of the Act defines the term “specialty occupation” as one that requires:

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

Section 214(i)(2) of the Act outlines the fundamental requirements to qualify to perform a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)(i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4) (iii)(C) the beneficiary 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

ATTACHMENT TO I-292



baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(3) Hold an unrestricted State license, registration or certificate 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.

The first issue to be considered in determining whether the beneficiary qualifies for the classification is whether s/he meets any of the criteria listed above in 8 C.F.R. 214.2(h)(4)(iii)(C)(1)-(3).

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The beneficiary does not hold a degree from a United States 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.

[Choose Appropriate Statement:]

The beneficiary does not appear to have any university studies.

[Or...]

The record indicates that the beneficiary studied for approximately [Choose approximate amount of education acquired by the beneficiary, e.g.: one semester, one year, two years, three years,...etc.] in a post-secondary setting, but does not establish that the beneficiary holds a foreign degree equivalent to a United States baccalaureate or higher degree in the field of [Insert Field of Education: e.g., ...Accounting...Market Research Analysis...Computer Analysis.... etc.] as required by the proffered position described by the petitioner.

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

ATTACHMENT TO I-292

This occupation does not require a State license, registration, or certification.

**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.**

The petitioner is attempting to show that the beneficiary possesses education, specialized training, and/or progressively responsible experience that is equivalent to completion of a U.S. baccalaureate or higher degree in the specialty occupation. This is the only criterion that the beneficiary could possibly meet.

The second issue to be discussed is whether the beneficiary qualifies under 8 C.F.R. 214.2(h)(4)(iii)(D).

In considering whether the beneficiary qualifies under this category by virtue of his or her education, practical experience and/or specialized training, 8 C.F.R. 214.2(h)(4)(iii)(D) states:

For purposes of paragraph (h)(4)(iii)(C)((4)) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by **one or more** of the following: (Emphasis added)

- (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 (PONSIS);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have

achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Further, 8 C.F.R. 214.2(h)(4)(ii) defines a "recognized authority" as follows:

...a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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.

The petitioner did not show that degree equivalency was being sought for the beneficiary based on the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program ("CLEP"), or Program on Non-collegiate Sponsored Instruction ("PONS").

Further, the petitioner did not show that degree equivalency was being sought for the beneficiary based on 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.

Also, the petitioner is not showing that degree equivalency was being sought for the beneficiary based on a determination by the USCIS 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.

**Choose appropriate statement for foreign education evaluation:**

**[Optional Statement #1:]** Also, the petitioner did not show that degree equivalency was being sought for the beneficiary based on an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials.

**Or**

**[Optional Statement #2:]** Although the petitioner submitted an evaluation from a foreign educational credentials evaluator to show that degree equivalency was being sought for the beneficiary based on the beneficiary's foreign education, training, and/or experience, foreign educational credentials evaluators may only evaluate an individual's foreign educational credentials - not training or work experience. Foreign education credentials evaluators do not have, the 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 by the regulation. 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

In the evaluation, the foreign educational credentials evaluator determined that the beneficiary's foreign education is equivalent to [Insert the Amount of college credit earned, e.g. one semester, one year, two years, three years...etc.] from an accredited college or university in the United States. This part of the evaluation, that is, the evaluation of the beneficiary's foreign education, is accepted.

However, the USCIS does not accept the assessment of the beneficiary's work experience and other training because, as previously stated, foreign education credentials evaluators are not qualified to make that assessment. Furthermore, foreign educational credentials evaluators are not considered as recognized authorities for the purpose of qualifying aliens under recognition of expertise.

Since the foreign educational credentials evaluation indicated that the beneficiary had less than a baccalaureate level of education in a field of study required by the proffered position, the USCIS requested that the petitioner provide additional evidence to show degree equivalency based on the beneficiary's training and/or work experience as provided in 8 C.F.R. 214.2(h)(4)(iii)(D)(1), (2), and (4) above.

[End Optional Statements for Foreign Education Evaluation]

The petitioner submitted an evaluation from an official who, it is claimed, 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 to show degree equivalency for the beneficiary.

In support of the evaluation, the petitioner submitted a letter from [Insert name of the official, his or her title, and the educational institution he or she claims to represent] that makes only general statements that all of the institution's professors are authorized to grant college credit; that the institution is accredited; and that the institution has a program for granting college-level credit for training and/or employment experience to show degree equivalency for the beneficiary.

That letter, dated [insert date letter was written and indicate how old the letter is at the time of filing...], or almost one year, two years, three years....] old at the time the present petition was filed, is insufficient to establish that the evaluator is currently employed by the claimed institution.

The letter is not from the college Registrar or Dean of Admissions and does not clearly identify the particular evaluator as a college official with authorization to grant college level credit for training and/or experience, nor does it clearly substantiate the evaluator's

employment with the institution.

Further, the evidence does not clearly substantiate claims that the institution has a program for granting college-level credit for training and/or employment experience with copies of pertinent pages from the institution's college catalog describing the program.

**[Optional Statement:]** Also, internet searches of the evaluator's claimed college or university website do not confirm a program for granting college-level credit for training and/or employment experience.

Additionally, the letter, alone, is insufficient to establish that the institution is accredited.

**[Optional Statement:]** Furthermore, the evaluator has not provided sufficient evidence to establish his/her credentials to determine educational equivalency to a bachelor's degree in the particular field of study required for entry into the occupation. The evaluator holds a bachelor's degree in [REDACTED]. However, the particular field of study required to perform the duties of the proffered position is [REDACTED], or a related field.

Although the evaluator states that he/she has the authority and responsibility for the evaluating and granting of college-level credit for all international transfer students, he/she has not established that [Choose Appropriate Phrases: ...he/she is authorized to grant college-level credit for training and/or work experience in the specific field of study required, as a minimum, for entry into the occupation; ...that his/her college is accredited; ...and that the college has a program for granting such credit. ...] Consequently, the evaluation is accorded little weight.

Since the burden of proof to establish eligibility for the benefit sought rests with petitioner who seeks to accord beneficiary's classification, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I. & N. Dec. 190 (Reg. Comm. 1972)

As such, the record fails to establish that the beneficiary is a member of any organizations whose usual requirement for entry is a baccalaureate degree in a specialized field of study. Further, the record contains no evidence that the beneficiary holds a state license, registration, or certification that authorizes him or her to practice a specialty occupation.

Moreover, the petitioner has not demonstrated that the beneficiary's education, training, and work experience qualifies as the equivalent of a baccalaureate level of education or higher pursuant to 8 C.F.R. 214(h)(4)(iii)(D)(1), (2), (3), or (4). As such, the only category remaining under which the beneficiary might possibly qualify would be 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

#### **Evaluation of Experience by USCIS**

ATTACHMENT TO I-292

When the petitioner fails to establish that the beneficiary's training and work experience qualifies as the equivalent of a baccalaureate level of education or higher pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(1), the USCIS may make its own independent assessment of the beneficiary's credentials.

In its independent assessment of the beneficiary's past employment experience for equivalency to the attainment of a baccalaureate or higher degree or its equivalent, the USCIS is guided by the regulations at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) as previously shown above.

Sample Analysis Item #1:

Letters of Work Experience - Inadequate

The petitioner submitted employment experience letters from the beneficiary's former employers. However, the evidentiary weight of these employment letters is minimal, at best.

Generally, the beneficiary's employment experience letters provide only the beneficiary's job title with dates to establish the duration of the beneficiary's employment. The letters do not provide sufficient details regarding the nature or size of the enterprises where the beneficiary claims to have been employed.

Additionally, the letters do not provide sufficient detail concerning the duties, responsibilities, or supervisory role the beneficiary had while working for these past employers.

Further, the writers of these letters have not provided sufficient evidence to show that the beneficiary's work experience included the theoretical and practical application of complex specialized knowledge required by the specialty occupation or 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. Merely stating that the beneficiary has such work experience is not sufficient to satisfy this requirement.

[Optional Statement:] Also, the record provides insufficient evidence to establish that the author(s) of the letter(s) actually worked with the beneficiary during the time of the claimed employment.

[Optional Statement:] Additionally, it should be noted that the employment experience letters provided by the petitioner are written on plain paper rather than on the claimed former employer's company letterhead stationery. As such, it is not possible to determine whether these letters were actually written by the claimed employers.

Sample Analysis Item #2:

Certificates of Technical Skill - Inadequate

The petitioner has submitted certificates of technical skill level issued to the beneficiary by [Organization] for [Skill]. However, these certificates alone are insufficient to establish the duration and academic level of the training courses attended.

Sample Analysis Item #3:

Inadequate Evaluation – Transcripts not Included in Record

The evaluation provided is insufficient to establish the claimed equivalency in the specific specialty because the record does not include complete transcripts of courses or supplemental information with regard to the beneficiary's training courses, to determine the duration of such courses and the academic level of the same courses.

Sample Analysis Item #4:

Inadequate Evaluation – A Resume Alone is Insufficient

An acceptable evaluation should describe the material evaluated and establish that the areas of experience are related to the specialty. A resume or curriculum vitae alone is insufficient to satisfy equivalency of a baccalaureate level of education based on training and/or experience. In this case, it appears that the evaluation is based, to a large extent, on a copy of the beneficiary's resume and fails to establish equivalency in the claimed specific specialty.

End Analysis

The record does not establish how the evaluator came to the conclusion that the beneficiary has the equivalent of a bachelor's degree or higher in the specialty occupation. Moreover, without the supplemental information, the petitioner has not established that the beneficiary has the equivalent of a U.S. baccalaureate or higher degree in the claimed specialty occupation.

**No Recognition of Expertise**

In addition to establishing equivalency, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentation shown in 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v), as follows:

- (i) Recognition of expertise in the specialty occupation by at least two



**recognized authorities in the same specialty occupation;**

The petitioner did not submit sufficient evidence to support the beneficiary's eligibility under this regulation.

**[Optional Statement #1]** The previously mentioned letters from former employers, which are considered under 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i), were found inadequate.

**[Optional Statement #2 – Use if petitioner claims foreign education evaluator is an expert but the record does not show the evaluator is a “Recognized Authority”]** The evaluation provided by the foreign educational credentials evaluator is not sufficient to establish recognition of expertise because, as previously stated, they are not considered recognized authorities for the purpose of qualifying under recognition of expertise. In this case the evaluator does not hold a degree in the field related to the proffered position. Also, the record does not establish the evaluator's qualifications as an expert, his or her experience giving such opinions that have been accepted as authoritative and by whom, and the basis for conclusions supported by copies of citations of any research material as required in 8 C.F.R. 214.2(h)(4)(ii).

**(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;**

The petitioner did not submit any evidence to establish that the beneficiary is the member of any organizations whose usual requirement for entry is a baccalaureate degree in a specialized field of study to establish his/her recognition of expertise in the field of study required by the proffered position.

**(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;**

The petitioner did not submit sufficient evidence to establish that there has ever been any published material by or about the beneficiary to establish his/her recognition of expertise in the field of study required by the proffered position.

**(iv) Licensure or registration to practice the specialty occupation in a foreign country; or**

The petitioner did not submit any evidence to establish that the beneficiary is licensed or registered to practice in the proffered position.

**(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.**

The petitioner did not submit any evidence from a recognized authority who has determined that the beneficiary's achievements in the field of the specialty occupation are significant.

[Optional Statement – Use if petitioner claims foreign education evaluator is an expert but the record does not show the evaluator is a “Recognized Authority”] The evaluation provided by the foreign educational credentials evaluator is not sufficient to establish recognition of expertise because, as previously stated, they are not considered recognized authorities for the purpose of qualifying under recognition of expertise. In this case the evaluator does not hold a degree in the field related to the proffered position. Also, the record does not establish the evaluator's qualifications as an expert, his or her experience giving such opinions that have been accepted as authoritative and by whom, and the basis for conclusions supported by copies of citations of any research material as required in 8 C.F.R. 214.2(h)(4)(ii).

As such, the petitioner has not established that the beneficiary qualifies to perform the services of a specialty occupation through training or employment experience under 8 C.F.R. 214.2(h)(4)(iii)(D)(5) and is ineligible for classification as an alien employed in a specialty occupation.

#### FINAL CONCLUSION:

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

#### One Issue Denial

Consequently, the petition is denied for the above stated reason.

#### Multiple Issue Denial

Consequently, the petition is denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

**PART 1**  
**EXPERIENTIAL EVALUATION OR COMBINATION EXPERIENTIAL/ACADEMIC**  
**EVALUATION USING AN EVALUATOR**

**DELETE ALL HIGHLIGHTED DIRECTIVES AND DIALOGUE BOXES BEFORE  
PRINTING**

- To delete boxes, right click on the little box that appears in the upper left corner and cut. -

**NOTE TO ADJUDICATORS:** This is only the first half of a complete "Equivalency" denial analysis. If the petitioner does not establish equivalency under any of the following four criteria, then proceed to the second half of the denial in which a determination of equivalency is made by the USCIS. Please see format in this folder: "Part 2 Exp Eval by USCIS".

FYI: The CSC has been granted access to the OLIVE database from the Department of State. The OLIVE database is a useful tool in detecting fraudulent Indian engineering degrees. The OLIVE database is for the state of Andhra Pradesh and has data from 1993 – present for of all engineering students who have graduated from the state.

For more information go to the Adjudicative Tools folder in this directory.

DO NOT go straight to a denial if the OLIVE database fails to show the beneficiary. Because this is third party information an intent-to-deny (ITD) or a request for evidence (RFE), allowing the beneficiary to rebut this information is required. Appropriate language in the RFE or ITD may include the following:

An inquiry with the United States Department of State fails to reveal a record that the beneficiary, [Insert full name], ever attended [insert college or university name].

Important: NEVER reference the OLIVE database (or any in-house sources of information, e.g., Choicepoint) in an ITD or RFE. Merely indicating that the DOS inquiry (or in the case of Choicepoint – a search of public records) is the source of the third party information should suffice.

The petitioner filed Form I-129, Petition for a nonimmigrant Worker, with the United States Citizenship and Immigration Services ("USCIS") to classify the beneficiary as an alien employed in a specialty occupation under 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act ("INA" or "Act").

**ISSUE:**

ATTACHMENT TO I-292

The issue to be discussed is whether the beneficiary is qualified to perform the duties of the proffered position. i.e. whether he meets any of the criteria listed in 8 C.F.R. 214.2(h)(4)(iii)(C).

**RULE:**

INA 101(a)(15)(H)(i)(b) provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation:

an alien...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)...with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1)....

INA 214(i)(2) outlines the fundamental requirements of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
  - (i) experience in the specialty equivalent to the completion of such degree, and
  - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position;

or

(4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorized 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.

The first issue to be considered in determining whether the beneficiary qualifies for the classification is whether s/he meets any of the criteria listed above in 8 C.F.R. 214.2(h)(4)(iii)(C)(1)-(3).

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The beneficiary does not hold a degree from a United States 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.

The beneficiary studied for two years in a post-secondary setting, but does not hold a foreign degree equivalent to a United States baccalaureate.

ATTACHMENT TO I-292

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

This occupation does not require a State license, registration, or certification.

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.

This is the only criterion that the beneficiary could possibly meet. In considering whether the beneficiary qualifies under this category by virtue of his education, practical experience and/or specialized training, 8 C.F.R. 214.2(h)(4)(iii)(D) states:

[E]quivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSII);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

**ANALYSIS:** (NOTE: The petitioner information paragraph is required only once in multiple issue denials.)

The petitioner is a [City, State] [non-profit OR for-profit] enterprise engaged in [nature of petitioner's business] with [number] employees and a gross annual income of \$ [amount]. It

seeks to temporarily employ the beneficiary as [a, an] [position] for a period of [number] years.

SAMPLE ANALYSIS 1 of 8:

- No evidence evaluator has authority to issue college-level credit based on alien's experience.
- Credentials evaluation services may only evaluate foreign educational credentials, not training or work experience.
- No evidence that letter from American Institute of Certified Public Accountants is a nationally recognized professional association or society for accountants.

The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. 214.2(h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted an evaluation from Jack E. Hoover of the Foundation for International Services, Inc. Mr. Hoover states that the beneficiary has the equivalent of a Bachelor's degree in Business Administration with a specialization in accounting from an accredited college or university in the United States. Mr. Hoover bases his opinion on an evaluation from Dr. Gary L. Karns, a professor at Seattle Pacific University for 21 years, formerly serving as Associate Dean of the School of Business and Economics, and as the Director of Graduate Programs. The record does not establish that Dr. Karns is presently employed by Seattle Pacific University. Dr. Karns opines that the beneficiary has the equivalent of a Bachelor's degree in Business Administration, specializing in accounting, from a university in the United States. Both equivalency evaluations are based solely on the beneficiary's prior work experience.

The record does not, however, establish that either evaluator is qualified to render an opinion on degree equivalence based upon the beneficiary's work experience. There is no proof in the record that either evaluator possesses authority to grant college-level credit 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 by 8 C.F.R. 214.2(h)(4)(iii)(D)(1). Counsel further asserts that the evaluations should be accepted by USCIS pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(3), as they are from a reliable credentials evaluation service. Credentials evaluation services may only evaluate an individuals foreign educational credentials, however, not training or work experience.

USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. 817 (Comm'r 1988). The evaluations will, accordingly, be given little weight.

In addition to the experiential evaluations submitted, the petitioner submitted evidence that the beneficiary is a member of the American Institute of Certified Public Accountants (AICPA). The record fails to establish that the AICPA is a nationally-recognized professional association or society for accountants. The record is silent as to what qualifications an individual must possess to obtain membership with that organization. As such, the petitioner has also failed to qualify the beneficiary pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(4).

SAMPLE ANALYSIS 2 of 8:

- No record of transcripts to show how evaluation done.
- No evidence evaluator has authority to issue college-level credit based on alien's experience.

In its initial petition, the petitioner submitted copies of the beneficiary's high school diploma and certificates for training courses that she attended in Australia in travel consultants, hotel/motel reception, and front office procedures. The petitioner also submitted an educational equivalency document from American Evaluation Institute, Long Beach, California. Dr. Mathew Clark, directing evaluator, stated that, based upon her transcripts and certificates, the beneficiary had attained the equivalent of a bachelor of science degree in business administration from an accredited U.S. university.

Upon review of the record, the educational equivalency document from American Evaluation Institute is inadequate documentary evidence on two grounds. First, the record is devoid of any transcripts of courses or any supplemental information with regard to the beneficiary's training courses, such as the duration of such courses and the academic level of the same courses. Without such supplemental information, it is not possible to determine how the evaluator reached his conclusion that the beneficiary had the equivalent of a U.S. university degree in business administration.

Second, there is no evidence on the record that the evaluator from American Evaluation Institute has the 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 grant such credit based on an individual's training and/or work experience, as required by 8 C.F.R.

214.2(h)(4)(iii)(D)(1). USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. 817 (Comm'r 1988). Accordingly, the educational equivalency document from American Evaluation Institute that was submitted by petitioner with the original petition is given no weight. Without such an evaluation, the petitioner has not satisfied the regulatory criterion outlined in 8 C.F.R.

214.2(h)(4)(iii)(C)(2). The remaining criteria are not applicable to the instant petition.

ATTACHMENT TO I-292



SAMPLE ANALYSIS 3 of 8:

- Evaluation based on degree in unrelated field plus experience.
- There is no evidence that the evaluator has authority to issue college-level credit based on alien's experience.

The petitioner is an import/export business. It employs 25 people and has a gross annual income of over \$4,000,000. It seeks to temporarily employ the beneficiary as a systems analyst for a period of three years.

As the proffered position is a systems analyst, the beneficiary must possess a baccalaureate degree, or its equivalent, in computer science or management information systems as noted in the Department of Labor's Occupational Outlook Handbook.

It is noted that the Evaluation Report prepared by the Foundation for International Services, Inc. (FIS) and submitted with the initial filing of the petition does not meet the standards of the regulations for determining equivalency. The evaluation purports to determine that the beneficiary has the equivalent of a bachelor's degree in computer science as a result of her education, professional training and employment experience. FIS is not qualified to prepare an evaluation of this sort as it does not: "[H]ave the 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 by the regulation. 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

FIS is qualified to provide an evaluation of the beneficiary's foreign degree pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specialized in evaluating foreign educational credentials." In the evaluation, FIS determined that the beneficiary's foreign degree is equivalent to a bachelor's degree in French and literature from an accredited college or university in the United States. This part of the evaluation is accepted, but USCIS does not accept the assessment of the beneficiary's work experience and other training as FIS is not qualified to make that assessment.

The petitioner has not demonstrated that the beneficiary's education and experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation under 8 C.F.R. 214.2(h)(4)(iii)(D)(1), (2), (3), or (4).

SAMPLE ANALYSIS 4 of 8: Evaluation useless without copy of degree or transcripts.

The petitioner is a rehabilitation care provider. It employs 89 people and has a gross annual income of \$3.5 million. It seeks to temporarily employ the beneficiary as an

ATTACHMENT TO I-292

accountant.

The first issue to be considered is whether the beneficiary meets any of the criteria listed in 8 C.F.R. 214.2(h)(4)(iii)(C). As the proffered position is an accountant, the beneficiary must possess a baccalaureate degree, or its equivalent, in accounting or a related field.

Counsel asserts that the educational evaluation on the record established the beneficiary's qualifications. Counsel also refers to an employment certificate and the beneficiary's resume, as well as letters from two former colleagues of the beneficiary's, and finally a letter written by a certified public accountant (CPA) who states that the beneficiary's accounting skills and qualifications are equal to those of a U.S. CPA.

It is noted that the evaluation report prepared by Morningside Evaluations and Consulting does not meet the regulatory standards for determining equivalency. The evaluation purports to determine that the beneficiary has the equivalent of a bachelor's degree in accounting as a result of his education, professional training and employment experience.

Morningside determined that the beneficiary's foreign degree is the equivalent to a bachelor's degree from an accredited college or university in the United States. Given that the record does not contain a copy of the beneficiary's diploma, and the copy of his college transcript does not indicate that he graduated, this evaluation is unsupported by the record and cannot be given any weight. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. Dec. 817 (Comm'r 1988).

SAMPLE ANALYSIS 5 of 8: Evaluator okay and college okay, but request by a private evaluation service not okay.

Although the petitioner has submitted a letter from Mercy College that establishes that Dr. Jelen does have the authority to grant the college-level credit for various graduate and undergraduate degree programs in the Division of Business and Accounting, Dr. Jelen's evaluation was not done on behalf of Mercy College; it was done for a private educational credentials consulting firm. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. 214.2(h)(4)(iii)(D)(3). Thus, the Morningside evaluation carries no weight in these proceedings. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. Dec. 817 (Comm'r 1988).

SAMPLE ANALYSIS 6 of 8: Evaluator okay, but no evidence of what evaluator looked at.

In reviewing the materials submitted to the record with regard to the beneficiary's qualifications, Dr. Parker appears to have the authority to grant college-level credit for

ATTACHMENT TO I-292

candidates' foreign educational credentials, training and/or employment experience at Ohio State University. However, his analysis of the beneficiary's employment history and level of job responsibilities is not persuasive. For example, the record is not clear as to how Dr. Parker arrived at his description of the beneficiary's job responsibilities and level of responsibility at either Ebbe Jensen or Soren Hvalso in Denmark. Upon a review of the record, no other materials are on the record with regard to the job duties of the beneficiary's previous employment, other than the beneficiary's curriculum vitae that simply lists his job titles and periods of employment with those companies.

**SAMPLE ANALYSIS 7 of 8:**

- Evaluator okay, but evaluation does not explain how much college credit given.
- Evaluation does not discuss alien's experience letters.
- Experience letters from different employers are identical.
- Experience letters overlap in time as concurrent full-time employment without explanation.

The petitioner sells multimedia products. It seeks to employ the beneficiary as a market research analyst.

The record contains the following documentation relating to the beneficiary's qualifications:

- Beneficiary's college transcripts from a Filipino university reflecting five semesters and one summer of studies that included the following accounting course: "Fundamentals of Management Accounting";
- Letter, dated September 3, 20002, from Alice J. Kaylor, Associated Academic Dean, Saint Vincent College, who concludes that, based on his educational and employment history, the beneficiary has attained the equivalent of a Bachelor of Science degree with a major in marketing from a regionally accredited U.S. college or university;
- Certificate of Experience, dated July 9, 2002, from the CEO of the Taiwanese business, Longturn Aquarium Co., Ltd. who states that the beneficiary was employed from May 1, 1990 to August 31, 2001, as a marketing and sales consultant; and
- Certificate of Experience, dated August 8, 2002, from the president of the Filipino business Asia United Bank, who states, that the beneficiary was employed from May 1, 1999 to December 30, 2000, as a senior manager/ marketing representative.

ATTACHMENT TO I-292

USCIS turns first to the criterion at 8 C.F.R. 214.2(h)(4)(iii)(D)(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. The record contains a letter from Alice J. Kaylor, Associate Dean of Saint Vincent College, who concludes, in part, as follows:

Based upon my review of his educational and employment history, it is my [judgment] that [the beneficiary] has attained the equivalent of a Bachelor of Science with a major in Marketing from a regionally accredited college or university in the United States. My assessment has been made through an application of the three-for-one work experience for college formula where his employment yields more than three years of equivalent education . . .

Ms. Kaylor does not provide specifics in her evaluation regarding how much credit she granted for the beneficiary's college studies. Nor does Ms. Kaylor discuss the employment letters in any detail. Upon review of the employment letters, it appears that the beneficiary was concurrently employed by the Filipino business, Asia United Bank, and the Taiwanese business, Longturn Aquarium Co., Ltd. At the Filipino business, his position was described as that of a senior manager/marketing representative, while at the Taiwanese business, his position was described as that of a marketing and sales consultant. The petitioner has provided no details regarding how this concurrent employment was accomplished, such as an hourly breakdown of the duties performed at the Filipino and Taiwanese businesses.

Doubt cast on any aspect of the petitioner's proof may, of course lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I. & N. Dec. 582, 591-2 (BIA 1988). Furthermore, it is noted that much of the text in both employment letters is identical. Thus, USCIS must question whether the opinions expressed in each letter are the views of each author. In view of the foregoing, Ms. Kaylor's opinion is accorded little weight. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. Matter of Caron International, 19 I. & N. Dec 791 (Comm'r 1988).

In view of the foregoing, the evaluation is accorded little weight. As such, the record contains insufficient evidence that the beneficiary has recognition of expertise.

SAMPLE ANALYSIS 8 of 8: Evaluator says alien has equivalent of a degree from a "non

accredited" college or university in the U.S.

The petitioner is an apparel manufacturer that seeks to employ the beneficiary as a software engineer.

The record contains an evaluation from Education International, Inc. concluding that the beneficiary holds a foreign degree determined to be equivalent to a baccalaureate degree from a "non-accredited" U.S. institution. The evaluator also concludes that the beneficiary completed approximately 60 percent of the equivalent of a master's degree, specializing in computer studies, from an accredited U.S. institution. As such, the evaluator does not find that the beneficiary holds the equivalent of a computer-related degree from an accredited U.S. institution. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. 214.2(h)(4)(iii)(C)(4).

The record contains the following documentation relating to the beneficiary's qualifications:

- Memorandum to counsel, dated October 23, 2001, from Joel B. Slocum from Education International, Inc., requesting additional information and indicating that the beneficiary "may" hold the equivalent of at least a bachelor's degree or higher in computer studies;
- Memorandum to counsel, dated October 30, 2001, from Joel B. Slocum from Education International, Inc., requesting additional information and indicating that it was still not clear where the beneficiary stood with respect to attaining a master's degree;
- Statement of Evaluation, dated December 5, 2001, from Joel B. Slocum from Education International, Inc., concluding that the beneficiary holds a foreign degree determined to be equivalent to a baccalaureate degree from a "non-accredited" U.S. institution, and the beneficiary completed approximately 60 percent of the equivalent of a master's degree, specializing in computer studies, from an accredited U.S. institution;
- Various documents demonstrating that the beneficiary completed Master's level computer-related courses at Aalborg University;
- Copies of a bachelor's degree in computer science, transcript, and related documents issued to the beneficiary by the Americanos College;
- Microsoft Examinations Score Report, dated March 28, 1999, reflecting that the beneficiary passed the examination on Networking Essentials;
- Letter, dated August 28, 1998, from Soren Haugaard of Bosch Telecom Danmark

ATTACHMENT TO I-292

A/S, who states, in part, that the beneficiary was employed from July 1 through August 31, 1998 "In a student job . . . as supervisor . . . with analysis of software modules written in ansi C . . . ."; and

- Letter, dated December 4, 1998, from an associate professor of Aalborg University, who states, in part, that the beneficiary was employed as a student assistant from September 1998 until June 1999, "working in a team with another student and successfully completing the development of a web-application prototype."

Counsel states, in part, that the record contains a letter from the International Student Coordinator of Aalborg University maintaining that, in order to enroll in the master's program at Aalborg University, the beneficiary had to submit evidence of a "B.Sc in electronic engineering or computer science from a recognized university . . . ." Counsel concludes that, as the evaluator from Education International, Inc., recognized Aalborg as an accredited institution, then the Americanos College must also be accredited, because Aalborg University accepted the beneficiary's credits from that institution. Counsel's assertion is noted. The record, however, does not include any corroborating evidence, such as a statement from the evaluator of Education International, Inc. explaining why he concluded that Americanos College was a non-accredited institution and conceding that such assessment was made in error, as asserted by counsel.

Doubt cast on any aspect of the petitioner's proof may, of course lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I. & N. Dec. 582, 591-2 (BIA 1988).

#### **FINAL CONCLUSION:**

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

#### **One Issue Denial**

Consequently, the petition is hereby denied for the above stated reason.

#### **Multiple Issue Denial**

Consequently, the petition is hereby denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

**NOTE TO ADJUDICATORS:** Please note that this is only the first half of the analysis. The second half of the analysis involves an evaluation by USCIS. Please see file in this folder: "Experiential Eval done by USCIS".

**PART 1**  
**EXPERIENTIAL EVALUATION**  
**OR COMBINATION EXPERIENTIAL/ACADEMIC EVALUATION**  
**USING AN EVALUATOR**

**DELETE ALL HIGHLIGHTED DIRECTIVES AND DIALOGUE BOXES BEFORE  
PRINTING**

- To delete boxes, right click on the little box that appears in the upper left corner and cut. -

**NOTE TO ADJUDICATORS:** This is only the first half of a complete "Equivalency" denial analysis. If the petitioner does not establish equivalency under any of the following four criteria, then proceed to the second half of the denial in which a determination of equivalency is made by the USCIS. Please see format in this folder: "Part 2 Exp Eval by USCIS".

FYI: The CSC has been granted access to the OLIVE database from the Department of State. The OLIVE database is a useful tool in detecting fraudulent Indian engineering degrees. The OLIVE database is for the state of Andhra Pradesh and has data from 1993 – present for of all engineering students who have graduated from the state.

For more information go to the Adjudicative Tools folder within this directory.

DO NOT go straight to a denial if the OLIVE database fails to show the beneficiary. Because this is third party information an intent-to-deny (ITD) or a request for evidence (RFE), allowing the beneficiary to rebut this information is required. Appropriate language in the RFE or ITD may include the following:

An inquiry with the United States Department of State fails to reveal a record that the beneficiary, [Insert full name], ever attended [insert college or university name].

Important: NEVER reference the OLIVE database (or any in-house sources of information, e.g., Choicepoint) in an ITD or RFE. Merely indicating that the DOS inquiry (or in the case of Choicepoint – a search of public records) is the source of the third party information should suffice.

The petitioner filed Form I-129, Petition for a nonimmigrant Worker, with the United States Citizenship and Immigration Services ("USCIS") to classify the beneficiary as an alien employed in a specialty occupation under 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act ("INA" or "Act").

ATTACHMENT TO I-292



**ISSUE:**

The overarching issue to be discussed is whether the beneficiary is qualified to perform the duties of the proffered position. i.e. whether he meets any of the criteria listed in 8 C.F.R. 214.2(h)(4)(iii)(C).

**RULE:**

INA 101(a)(15)(H)(i)(b) provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation:

an alien...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)...with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1)....

INA 214(i)(2) outlines the fundamental requirements of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
  - (i) experience in the specialty equivalent to the completion of such degree, and
  - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position;  
or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorized 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.

The first issue to be considered in determining whether the beneficiary qualifies for the classification is whether s/he meets any of the criteria listed above in 8 C.F.R. 214.2(h)(4)(iii)(C)(1)-(3).

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The beneficiary does not hold a degree from a United States 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.

The beneficiary studied for two years in a post-secondary setting, but does not hold a foreign degree equivalent to a United States baccalaureate.

ATTACHMENT TO I-292

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

This occupation does not require a State license, registration, or certification.

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.

This is the only criterion that the beneficiary could possibly meet. In considering whether the beneficiary qualifies under this category by virtue of his education, practical experience and/or specialized training, 8 C.F.R. 214.2(h)(4)(iii)(D) states:

[E]quivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSII);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

**ANALYSIS:** (NOTE: The petitioner information paragraph is required only once in multiple issue denials.)

The petitioner is a [City, State] [non-profit OR for-profit] enterprise engaged in [nature of petitioner's business] with [number] employees and a gross annual income of \$ [amount]. It seeks to temporarily employ the beneficiary as [a, an] [position] for a period of [number] years.

See individual "Word" documents in this folder for examples of ANALYSES.  
Block, Copy, Paste, and Edit appropriate text here.

#### FINAL CONCLUSION:

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

#### One Issue Denial

Consequently, the petition is hereby denied for the above stated reason.

#### Multiple Issue Denial

Consequently, the petition is hereby denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

**NOTE TO ADJUDICATORS:** Please note that this is only the first half of the analysis. The second half of the analysis involves an evaluation by USCIS. Please see file in this folder: "Experiential Eval done by USCIS".

SAMPLE ANALYSIS 8 of 8:

- Evaluator says alien has equivalent of a degree from a "non-accredited" college or university in the U.S.

The petitioner is an apparel manufacturer that seeks to employ the beneficiary as a software engineer.

The record contains an evaluation from Education International, Inc. concluding that the beneficiary holds a foreign degree determined to be equivalent to a baccalaureate degree from a "non-accredited" U.S. institution. The evaluator also concludes that the beneficiary completed approximately 60 percent of the equivalent of a master's degree, specializing in computer studies, from an accredited U.S. institution. As such, the evaluator does not find that the beneficiary holds the equivalent of a computer-related degree from an accredited U.S. institution. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. 214.2(h)(4)(iii)(C)(4).

The record contains the following documentation relating to the beneficiary's qualifications:

- Memorandum to counsel, dated October 23, 2001, from Joel B. Slocum from Education International, Inc., requesting additional information and indicating that the beneficiary "may" hold the equivalent of at least a bachelor's degree or higher in computer studies;
- Memorandum to counsel, dated October 30, 2001, from Joel B. Slocum from Education International, Inc., requesting additional information and indicating that it was still not clear where the beneficiary stood with respect to attaining a master's degree;
- Statement of Evaluation, dated December 5, 2001, from Joel B. Slocum from Education International, Inc., concluding that the beneficiary holds a foreign degree determined to be equivalent to a baccalaureate degree from a "non-accredited" U.S. institution, and the beneficiary completed approximately 60 percent of the equivalent of a master's degree, specializing in computer studies, from an accredited U.S. institution;
- Various documents demonstrating that the beneficiary completed Master's level computer-related courses at Aalborg University;
- Copies of a bachelor's degree in computer science, transcript, and related documents issued to the beneficiary by the Americanos College;
- Microsoft Examinations Score Report, dated March 28, 1999, reflecting that the beneficiary passed the examination on Networking Essentials;
- Letter, dated August 28, 1998, from Soren Haugaard of Bosch Telecom Danmark A/S, who states, in part, that the beneficiary was employed from July 1 through August 31, 1998 "In a student job . . . as supervisor . . . with analysis of software

modules written in ansi C . . . ."; and

- Letter, dated December 4, 1998, from an associate professor of Aalborg University, who states, in part, that the beneficiary was employed as a student assistant from September 1998 until June 1999, "working in a team with another student and successfully completing the development of a web-application prototype."

Counsel states, in part, that the record contains a letter from the International Student Coordinator of Aalborg University maintaining that, in order to enroll in the master's program at Aalborg University, the beneficiary had to submit evidence of a "B.Sc in electronic engineering or computer science from a recognized university . . . ." Counsel concludes that, as the evaluator from Education International, Inc., recognized Aalborg as an accredited institution, then the Americanos College must also be accredited, because Aalborg University accepted the beneficiary's credits from that institution. Counsel's assertion is noted. The record, however, does not include any corroborating evidence, such as a statement from the evaluator of Education International, Inc. explaining why he concluded that Americanos College was a non-accredited institution and conceding that such assessment was made in error, as asserted by counsel.

Doubt cast on any aspect of the petitioner's proof may, of course lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I. & N. Dec. 582, 591-2 (BIA 1988).

SAMPLE ANALYSIS 4 of 8:

- Evaluation useless without copy of degree or transcripts.

The petitioner is a rehabilitation care provider. It employs 89 people and has a gross annual income of \$3.5 million. It seeks to temporarily employ the beneficiary as an accountant.

The first issue to be considered is whether the beneficiary meets any of the criteria listed in 8 C.F.R. 214.2(h)(4)(iii)(C). As the proffered position is an accountant, the beneficiary must possess a baccalaureate degree, or its equivalent, in accounting or a related field.

Counsel asserts that the educational evaluation on the record established the beneficiary's qualifications. Counsel also refers to an employment certificate and the beneficiary's resume, as well as letters from two former colleagues of the beneficiary's, and finally a letter written by a certified public accountant (CPA) who states that the beneficiary's accounting skills and qualifications are equal to those of a U.S. CPA.

It is noted that the evaluation report prepared by Morningside Evaluations and Consulting does not meet the regulatory standards for determining equivalency. The evaluation purports to determine that the beneficiary has the equivalent of a bachelor's degree in accounting as a result of his education, professional training and employment experience.

Morningside determined that the beneficiary's foreign degree is the equivalent to a bachelor's degree from an accredited college or university in the United States. Given that the record does not contain a copy of the beneficiary's diploma, and the copy of his college transcript does not indicate that he graduated, this evaluation is unsupported by the record and cannot be given any weight. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. Dec. 817 (Comm'r 1988).

SAMPLE ANALYSIS 5 of 8:

- Evaluator okay and college okay, but request by a private evaluation service not okay.

Although the petitioner has submitted a letter from Mercy College that establishes that Dr. Jelen does have the authority to grant the college-level credit for various graduate and undergraduate degree programs in the Division of Business and Accounting, Dr. Jelen's evaluation was not done on behalf of Mercy College; it was done for a private educational credentials consulting firm. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. 214.2(h)(4)(iii)(D)(3). Thus, the Morningside evaluation carries no weight in these proceedings. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. Dec. 817 (Comm'r 1988).



SAMPLE ANALYSIS 7 of 8:

- Evaluator okay, but evaluation does not explain how much college credit given;
- evaluation does not discuss alien's experience letters;
- experience letters from different employers are identical;
- experience letters overlap in time as concurrent full-time employment without explanation.

The petitioner sells multimedia products. It seeks to employ the beneficiary as a market research analyst.

The record contains the following documentation relating to the beneficiary's qualifications:

- Beneficiary's college transcripts from a Filipino university reflecting five semesters and one summer of studies that included the following accounting course: "Fundamentals of Management Accounting";
- Letter, dated September 3, 20002, from Alice J. Kaylor, Associated Academic Dean, Saint Vincent College, who concludes that, based on his educational and employment history, the beneficiary has attained the equivalent of a Bachelor of Science degree with a major in marketing from a regionally accredited U.S. college or university;
- Certificate of Experience, dated July 9, 2002, from the CEO of the Taiwanese business, Longturn Aquarium Co., Ltd. who states that the beneficiary was employed from May 1, 1990 to August 31, 2001, as a marketing and sales consultant; and
- Certificate of Experience, dated August 8, 2002, from the president of the Filipino business Asia United Bank, who states, that the beneficiary was employed from May 1, 1999 to December 30, 2000, as a senior manager/ marketing representative.

USCIS turns first to the criterion at 8 C.F.R. 214.2(h)(4)(iii)(D)(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. The record contains a letter from Alice J. Kaylor, Associate Dean of Saint Vincent College, who concludes, in part, as follows:

Based upon my review of his educational and employment history, it is my [judgment] that [the beneficiary] has attained the equivalent of a Bachelor of Science with a major in Marketing from a regionally accredited college or university in the United States. My assessment has been made through an application of the three-for-one work experience for college formula where his employment yields more than three years of equivalent education . . .

Ms. Kaylor does not provide specifics in her evaluation regarding how much credit she granted for the beneficiary's college studies. Nor does Ms. Kaylor discuss the employment letters in any detail. Upon review of the employment letters, it appears that the beneficiary was concurrently employed by the Filipino business, Asia United Bank, and the Taiwanese business, Longturn Aquarium Co., Ltd. At the Filipino business, his position was described as that of a senior manager/marketing representative, while at the Taiwanese business, his position was described as that of a marketing and sales consultant. The petitioner has provided no details regarding how this concurrent employment was accomplished, such as an hourly breakdown of the duties performed at the Filipino and Taiwanese businesses.

Doubt cast on any aspect of the petitioner's proof may, of course lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I. & N. Dec. 582, 591-2 (BIA 1988). Furthermore, it is noted that much of the text in both employment letters is identical. Thus, USCIS must question whether the opinions expressed in each letter are the views of each author. In view of the foregoing, Ms. Kaylor's opinion is accorded little weight. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. Matter of Caron International, 19 I. & N. Dec 791 (Comm'r 1988).

In view of the foregoing, the evaluation is accorded little weight. As such, the record contains insufficient evidence that the beneficiary has recognition of expertise.

SAMPLE ANALYSIS 1 of 8:

- No evidence evaluator has authority to issue college-level credit based on alien's experience.
- Credentials evaluation services may only evaluate foreign educational credentials, not training or work experience.
- No evidence that letter from American Institute of Certified Public Accountants is a nationally recognized professional association or society for accountants.

The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. 214.2(h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted an evaluation from Jack E. Hoover of the Foundation for International Services, Inc. Mr. Hoover states that the beneficiary has the equivalent of a Bachelor's degree in Business Administration with a specialization in accounting from an accredited college or university in the United States. Mr. Hoover bases his opinion on an evaluation from Dr. Gary L. Karns, a professor at Seattle Pacific University for 21 years, formerly serving as Associate Dean of the School of Business and Economics, and as the Director of Graduate Programs. The record does not establish that Dr. Karns is presently employed by Seattle Pacific University. Dr. Karns opines that the beneficiary has the equivalent of a Bachelor's degree in Business Administration, specializing in accounting, from a university in the United States. Both equivalency evaluations are based solely on the beneficiary's prior work experience.

The record does not, however, establish that either evaluator is qualified to render an opinion on degree equivalence based upon the beneficiary's work experience. There is no proof in the record that either evaluator possesses authority to grant college-level credit 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 by 8 C.F.R. 214.2(h)(4)(iii)(D)(1). Counsel further asserts that the evaluations should be accepted by USCIS pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(3), as they are from a reliable credentials evaluation service. Credentials evaluation services may only evaluate an individuals foreign educational credentials, however, not training or work experience.

USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. 817 (Comm'r 1988). The evaluations will, accordingly, be given little weight.

In addition to the experiential evaluations submitted, the petitioner submitted evidence that the beneficiary is a member of the American Institute of Certified Public Accountants (AICPA). The record fails to establish that the AICPA is a nationally-recognized professional association or society for accountants. The record is silent as to what qualifications an individual must possess to obtain membership with that organization. As such, the petitioner has also failed to qualify the beneficiary pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(4).

**SAMPLE ANALYSIS 2 of 8:**

- No record of transcripts to show how evaluation done.
- No evidence evaluator has authority to issue college-level credit based on alien's experience.

In its initial petition, the petitioner submitted copies of the beneficiary's high school diploma and certificates for training courses that she attended in Australia in travel consultants, hotel/motel reception, and front office procedures. The petitioner also submitted an educational equivalency document from American Evaluation Institute, Long Beach, California. Dr. Mathew Clark, directing evaluator, stated that, based upon her transcripts and certificates, the beneficiary had attained the equivalent of a bachelor of science degree in business administration from an accredited U.S. university.

Upon review of the record, the educational equivalency document from American Evaluation Institute is inadequate documentary evidence on two grounds. First, the record is devoid of any transcripts of courses or any supplemental information with regard to the beneficiary's training courses, such as the duration of such courses and the academic level of the same courses. Without such supplemental information, it is not possible to determine how the evaluator reached his conclusion that the beneficiary had the equivalent of a U.S. university degree in business administration.

Second, there is no evidence on the record that the evaluator from American Evaluation Institute has the 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 grant such credit based on an individual's training and/or work experience, as required by 8 C.F.R.

214.2(h)(4)(iii)(D)(1). USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. 817 (Comm'r 1988). Accordingly, the educational equivalency document from American Evaluation Institute that was submitted by petitioner with the original petition is given no weight. Without such an evaluation, the petitioner has not satisfied the regulatory criterion outlined in 8 C.F.R.

214.2(h)(4)(iii)(C)(2). The remaining criteria are not applicable to the instant petition.

SAMPLE ANALYSIS 6 of 8:

- Evaluator okay, but no evidence of what evaluator looked at.

In reviewing the materials submitted to the record with regard to the beneficiary's qualifications, Dr. Parker appears to have the authority to grant college-level credit for candidates' foreign educational credentials, training and/or employment experience at Ohio State University. However, his analysis of the beneficiary's employment history and level of job responsibilities is not persuasive. For example, the record is not clear as to how Dr. Parker arrived at his description of the beneficiary's job responsibilities and level of responsibility at either Ebbe Jensen or Soren Hvalso in Denmark. Upon a review of the record, no other materials are on the record with regard to the job duties of the beneficiary's previous employment, other than the beneficiary's curriculum vitae that simply lists his job titles and periods of employment with those companies.

SAMPLE ANALYSIS 3 of 8:

- Evaluation based on degree in unrelated field plus experience.
- There is no evidence that the evaluator has authority to issue college-level credit based on alien's experience.

The petitioner is an import/export business. It employs 25 people and has a gross annual income of over \$4,000,000. It seeks to temporarily employ the beneficiary as a systems analyst for a period of three years.

As the proffered position is a systems analyst, the beneficiary must possess a baccalaureate degree, or its equivalent, in computer science or management information systems as noted in the Department of Labor's Occupational Outlook Handbook.

It is noted that the Evaluation Report prepared by the Foundation for International Services, Inc. (FIS) and submitted with the initial filing of the petition does not meet the standards of the regulations for determining equivalency. The evaluation purports to determine that the beneficiary has the equivalent of a bachelor's degree in computer science as a result of her education, professional training and employment experience. FIS is not qualified to prepare an evaluation of this sort as it does not: "[H]ave the 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 by the regulation. 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

FIS is qualified to provide an evaluation of the beneficiary's foreign degree pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specialized in evaluating foreign educational credentials." In the evaluation, FIS determined that the beneficiary's foreign degree is equivalent to a bachelor's degree in French and literature from an accredited college or university in the United States. This part of the evaluation is accepted, but USCIS does not accept the assessment of the beneficiary's work experience and other training as FIS is not qualified to make that assessment.

The petitioner has not demonstrated that the beneficiary's education and experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation under 8 C.F.R. 214.2(h)(4)(iii)(D)(1), (2), (3), or (4).

**PART 2.**  
**EXPERIENTIAL EVALUATION**  
**OR COMBINATION EXPERIENTIAL/ACADEMIC EVALUATION**  
**DONE BY USCIS**

**DELETE ALL HIGHLIGHTED DIRECTIVES AND DIALOGUE BOXES BEFORE  
PRINTING**

- To delete boxes, right click on the little box that appears in the upper left corner and cut. -

**NOTE TO ADJUDICATORS:** This format is not a complete denial in itself.

This is only Part 2 of a complete "Equivalency" denial analysis. See "Part 1 Exp Eval by Evaluatr" for the first half of the analysis that involves an evaluation under any of four criteria. This format is used when the petitioner did not establish equivalency based on any of the other four possible evidentiary requirements, which include 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 (PONSIS);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

**ISSUE:**

Although the petitioner has also failed to qualify the beneficiary pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(4), under 8 C.F.R. 214.2(h)(4)(iii)(D)(5), USCIS may make its own independent assessment of the beneficiary's credentials. In its independent assessment of the beneficiary's past employment experience for equivalency to the attainment of a baccalaureate or higher degree or its equivalent, USCIS is guided by the regulations at 8

ATTACHMENT TO I-292

C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v).

**RULE:**

8 C.F.R. 214.2(h)(4)(iii)(D)(5) provides:

A determination by the Service that the equivalent of the degree is 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 the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

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

Further, 8 C.F.R. 214.2(h)(4)(ii) defines a "recognized authority" thusly:

... a person or an organization with expertise in a particular field, special



skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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.

**ANALYSIS:** (NOTE: The petitioner information paragraph is required only once in multiple issue denials.)

The petitioner is a [City, State] [non-profit OR for-profit] enterprise engaged in [nature of petitioner's business] with [number] employees and a gross annual income of \$ [amount]. It seeks to temporarily employ the beneficiary as [a, an] [position] for a period of [number] years.

**SAMPLE ANALYSIS 1 of 11: No recognition of expertise. No evidence of Virgo Award.**

All of the beneficiary's employment experience letters provide the beneficiary's job title and some provide a time reference of the beneficiary's duration of employment with them; however, all of them do not provide any details concerning the duties, responsibilities, or supervisory role the beneficiary had while employed with this past employers.

In addition to letters from past employers, the beneficiary provided evidence of receiving the following: Virgo Award in Journalism in 1999; the Best All-Around Excellence in Reporting 2nd Place award from the Society of Professional Journalists; and Award of Achievement in Journalism or his "outstanding contribution in bringing the Filipino [illegible] into the new millennium of 2000" from Reflections XII held at the Omni Hotel in Los Angeles, California.

A search of the Internet provided no information about the Virgo Award. A search of the Internet also provided no information about the Reflections XII award. Thus, the beneficiary also fails to present conclusive evidence that he has recognized expertise in the specialty occupation. USCIS does not have enough information about the Virgo Award, Society of Professional Journalists, or Reflections XII associations who gave awards to the beneficiary to make a determination if they are "recognized authorities" as that term is used in 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) or (v). A "recognized authority" for purposes of these regulatory provisions is defined at 8 C.F.R. 214.2(h)(ii) as follows:

ATTACHMENT TO I-292

Recognized authority means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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.

The record does not contain any evidence that the award associations are recognized authorities under 8 C.F.R. 214.2(h)(4)(ii).

The beneficiary also provided information about his memberships in professional associations in his sworn affidavit which is a reference to eligibility at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(ii). He stated that he is a current member and Board Director of the Philippine National Press Club of America, an affiliate of the National Press Club in Washington, D.C. He also stated that he was a member of the Society of Professional Journalists from 1992 through 1996. The beneficiary also asserted that he was a member of the Airport Press Corps in the past. However, the record does not contain any documentary evidence proving the beneficiary is a member of these associations. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I. & N. Dec. 190 (Reg. Comm'r 1972) (Since the burden of proof to establish eligibility for the benefits sought rests with petitioner who seeks to accord beneficiaries' classification, the contention that petitioner need only go "on record" with unsupported statements is rejected).

Thus, there is insufficient evidence that proves the beneficiary qualifies to perform the services of a specialty occupation through training or employment experience under §214.2(h)(4)(iii)(D)(5).

Under INA 291, the burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden.

**SAMPLE ANALYSIS 2 of 11: Not enough Experience.**

Since the beneficiary does not appear to have any university studies, she would need to

possess twelve years of work experience to meet the equivalency ration outlined in this regulation. In addition, the petitioner would have to establish that the beneficiary's work experience also fulfills the criteria outlined in the regulations as to progressively responsible work.

The letter from ID Tours, the beneficiary's former employer, only documents four years and eight months of work experience. In addition, while the ID Tours letter details the beneficiary's two promotions within the company, and the additional letters submitted by the petitioner speak to the quality of the beneficiary's work, the beneficiary's experience does not appear adequate to meet the regulatory criteria outlined in 8 C.F.R. 214.2(h)(4)(iii)(D)(5). Without more persuasive testimony, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation.

Under INA 291, the burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden.

SAMPLE ANALYSIS 3 of 11: Letters of Recognition of Expertise in the specialty occupation were not from recognized authorities in the same specialty occupation.

The petitioner is an import/export business. It employs 25 people and has a gross annual income of over \$4,000,000. It seeks to temporarily employ the beneficiary as a systems analyst for a period of three years.

As the proffered position is a systems analyst, the beneficiary must possess a baccalaureate degree, or its equivalent, in computer science or management information systems.

The petitioner has not demonstrated that the beneficiary's education and experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation under 8 C.F.R. 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). The only category under which the beneficiary could qualify would be 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

Counsel submitted three expert letters from alleged recognized authorities in the same specialty occupation. The first letter is from Jay Moon, CEO of Newmerica Technology, who holds a Master of Science Degree in Computer Information Systems. He stated that the beneficiary completed coursework to achieve her Microsoft Certified Network Engineer and Cisco Certified Network Associate ratings. He also stated the she is qualified for a "task where comprehensive network knowledge is required . . . . [S]he has an ability to do the task for network system analyst." Mr. Moon was the program director of the facility where the beneficiary received her training.

The second letter is from Jong Wha Lee, a colleague for about one year at Tele-Com Art in Korea. Jong Wha Lee stated that she and the beneficiary worked at "computer educational programming but also at managing the company's computer system." Jong Wha Lee has a

ATTACHMENT TO I-292

Bachelor's Degree in Computer Science from Seoul Seoil University.

The third letter is from Mee Hee Jeong, an administrator at the Narae Fine Art Academy where the beneficiary worked from July 1992 to February 1995 as a teacher in "computer education, taught basic knowledge of hardware and software, developed the academy operation and management program (for registration, attendance check, students' record filing and academy affairs etc.). She was in charge of computer system development and troubleshooting for the academy computers. " Mee Hee Jeong has a Bachelor's Degree in Applied Fine Arts.

Pursuant to the regulations, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentations referenced at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v). Counsel did not submit any evidence to support the beneficiary's eligibility under this regulation other than the three letters, which are considered under 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i). This standard required "[r]ecognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation." The letter from Mr. Moon would qualify under this standard; however, the other two letters are not from "recognized authorities" and, therefore, cannot be used to document the beneficiary's experience.

**SAMPLE ANALYSIS 4 of 11: Letters of Experience not detailed.**

The documentation recounting the beneficiary's work experience consisted of statements from the following: Julian Perez, President of Marketing Advertisement S.A.; Anibal Romero of Marketing Power; Maximiliano Lopez, President of Strategic Marketing; and Maria Chejtman, Insurance Agent and Consultant.

Those statements noted the beneficiary's years of service and described generally her areas of responsibility. They are, however, insufficient in detail to determine that: the work experience included the theoretical and practical application of specialized knowledge required by the proffered position; the beneficiary'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 beneficiary has recognition of expertise in the specialty. Without more persuasive testimony, USCIS cannot determine that the beneficiary is qualified to perform the duties of the specialty occupation.

**SAMPLE ANALYSIS 5 of 11:**

- **Alien has a degree, but not related to the offered position.**
- **Transcript unclear whether alien completed three or four-year study.**
- **Evaluations are conclusory without discussion of documents reviewed.**

ATTACHMENT TO I-292

- Equivalency letters reach different conclusions.

The beneficiary's bachelor's degree is not related to the field of marketing. The university transcript is unclear as to whether the beneficiary completed a three or four-year course of study. The evaluation letters provided do not specify how the evaluators arrived at their differing conclusions. One letter states that the beneficiary's university studies are equal to a U.S. bachelor's degree, and another letter evaluates her education as equal to three years of study towards a U.S. bachelor's degree. It cannot be determined how many years of studies she lacks in order to reach the equivalent of U.S. degree. USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. Dec. 820 (Comm'r 1988).

In addition, the two letters from the beneficiary's former employers do not contain enough detail to determine how many years of experience the beneficiary has in marketing management, and whether this experience was gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in marketing. Finally, the record lacks the required showing of the beneficiary's expertise in travel marketing management. The record contains only one letter from a member of the travel industry written on the beneficiary's behalf, and the writer is not shown to be a recognized authority in the specialty of marketing management. The evidence does not establish that the beneficiary is qualified to perform a specialty occupation.

SAMPLE ANALYSIS 6 of 11:

- Letters of Experience not detailed.
- Not clear whether alien worked part-time or full-time.
- Not clear that alien's experience gained while working with peers, supervisors, or subordinates who have a degree or equivalent in the specialty.

The record does not contain enough information for USCIS to determine that the beneficiary has acquired the equivalent of the degree required by the specialty through a combination of education, specialized training, and/or work experience in areas related to the specialty, and that the beneficiary has achieved recognition of expertise in the specialty occupation as a result of such training and experience provided for in 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

The evidence establishing the beneficiary's work experience lacks sufficient detail to establish that the beneficiary has the equivalent of a bachelor's degree in dance. For

example, the petitioner states that the beneficiary was a member of the Official Ballet Folklórico from 1973 - 1981. The record reflects that in that capacity, the beneficiary performed each Sunday, and participated in national and international tours. It is not possible from this general description, to determine the amount of time actually worked in this capacity during the dates listed, or that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty. Likewise, the petitioner listed many workshops and teaching assignments completed by the beneficiary. The record does not indicate, once again, the amount of time specifically spent in some of these endeavors, simply stating that an event was accomplished in a particular month, or listing no length of a particular event. Per regulation, USCIS must be able to determine that the beneficiary has the equivalent of 3 years of specialized training and/or work experience for each year of college-level training the beneficiary lacks in the particular specialty. The training and work experience evidence provided are insufficient to allow this analysis.

It is clear from the record that the beneficiary is highly respected as a performer, director, and instructor in the offered specialty. That fact alone is insufficient, however, to find that the beneficiary has the equivalent of a baccalaureate in the field. The petitioner must establish one of the criteria of 8 C.F.R. 214.2(h)(4)(iii)(C). This, it has failed to do.

SAMPLE ANALYSIS 7 of 11:

- Expert okay.
- Experience letters from different employers are identical.
- Experience letters overlap in time as concurrent full-time employment without explanation.

The petitioner sells multimedia products. It seeks to employ the beneficiary as a market research analyst.

The record contains the following documentation relating to the beneficiary's qualifications:

- Beneficiary's college transcripts from a Filipino university reflecting five semesters and one summer of studies that included the following accounting course: "Fundamentals of Management Accounting";
- Credentials evaluation, dated September 4, 2002, indicating that the beneficiary completed the equivalent of 51 U.S. semester hours at an accredited U.S. university;
- Evaluation, dated October 4, 2002, from Harlan Spotts, Ph.D., Associate Professor of Marketing, Western New England College, who concludes that, based on his

education and professional experience, the beneficiary has attained the equivalent of a U.S. bachelor's degree in business administration with a major in marketing;

- Certificate of Experience, dated July 9, 2002, from the CEO of the Taiwanese business, Longturn Aquarium Co., Ltd. who states that the beneficiary was employed from May 1, 1990 to August 31, 2001, as a marketing and sales consultant; and
- Certificate of Experience, dated August 8, 2002, from the president of the Filipino business Asia United Bank, who states, that the beneficiary was employed from May 1, 1999 to December 30, 2000, as a senior manager/ marketing representative.

USCIS turns to the criterion at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) - a determination by USCIS 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.

The record includes an evaluation from Harlan Spotts, Ph.D., Associate Professor of Marketing, Western New England College, who finds that the beneficiary's 51 credits of college coursework counts toward almost two years of a four-year college degree in liberal arts. Dr. Spotts concludes that the beneficiary's educational background and eleven years of work experience as a marketing and sales consultant are equivalent to a U.S. bachelor's degree in business administration with a major in marketing. Dr. Spotts bases his conclusion on the beneficiary's transcripts and the Certificate of Experience written by the CEO of Longturn Aquarium Co., Ltd.

Upon review of the employment letters, it appears that the beneficiary was concurrently employed by the Filipino business, Asia United Bank, and the Taiwanese business, Longturn Aquarium Co., Ltd. At the Filipino business, his position was described as that of a senior manager/marketing representative, while at the Taiwanese business, his position was described as that of a marketing and sales consultant. The petitioner has provided no details regarding how this concurrent employment was accomplished, such as an hourly breakdown of the duties performed at the Filipino and Taiwanese businesses.

Doubt cast on any aspect of the petitioner's proof may, of course lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I. & N. Dec. 582, 591-2 (BIA 1988). Furthermore, it is noted that much of the text in both employment letters is identical. Thus, USCIS must question whether the opinions expressed in each letter are the views of each author. In view of the

ATTACHMENT TO I-292

foregoing, Dr. Spotts' expert opinion is accorded little weight. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. Matter of Caron International, 19 I. & N. Dec 791 (Comm'r 1988).

In view of the foregoing, the expert opinion is accorded little weight. As such, the record contains insufficient evidence that the beneficiary has recognition of expertise.

SAMPLE ANALYSIS 8 of 11:

- Alien has a foreign degree, but has submitted no evaluation equating it to a U.S. Degree.

-USCIS conducts its own evaluation in this situation.

- Letters of experience not detailed.

The petitioner is an engineering and architectural firm that seeks to employ the beneficiary as an architectural designer.

The record contains, in part, the following documents relating to the beneficiary: (1) a certificate from the Republic of the Philippines Eulogio "Amang" Rodriguez Institute of Science and Technology, Nagtahan, Sampaloc, Manila, which certifies that the beneficiary holds a bachelor of science degree in architecture; (2) a certificate of attendance in "computer Aided Design and Drafting"; and (3) two employment verification letters.

The petitioner stated that a candidate must hold a bachelor's degree in architecture. However, the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. Although the beneficiary possess a foreign degree, it has not been determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. 214.2(h)(4)(iii)(C)(4).

Because no evidence in the record equates the beneficiary's credentials to a United States baccalaureate or higher degree pursuant to the first four criteria set forth in 8 C.F.R. 214.2(h)(4)(iii)(D), USCIS must, therefore, determine 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 set out at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v).

Based upon the evidence in the record pertaining to the beneficiary and previously described, USCIS cannot determine whether this documentation establishes equivalence to a baccalaureate degree in architecture.

USCIS now considers the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by each employer, the beneficiary's duties did not seem to involve the theoretical and practical knowledge of architecture. One letter merely certifies the beneficiary's employment as a supervisor from December 1995 to November 1998. Although the second letter states that for two years the beneficiary had prepared working drawings, renderings, and perspectives, neither of the letters specifically describes the beneficiary's daily activities or his level of responsibility. Thus, USCIS cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is architecture. Furthermore, neither employer indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is no evidence that the beneficiary has recognition of expertise.

**SAMPLE ANALYSIS 9 of 11:**

- **Alien's Letters of Experience on plain paper, not stationary.**
- **No evidence of specialty occupation type duties.**

USCIS takes note of the fact that these employment letters are all written on plain paper rather than on company letterhead stationery. Therefore, it is not possible to determine whether these letters were actually written by the managers claimed. Furthermore, the writers of these letters have not provided any evidence to show that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation or 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. Therefore, the employment letters are accorded little weight.

All of the beneficiary's employment experience letters provide the beneficiary's job title and some provide a time reference of the beneficiary's duration of employment with them; however, all of them do not provide any details concerning the duties, responsibilities, or supervisory role the beneficiary had while employed with this past employers.

SAMPLE ANALYSIS 10 of 11: Discrediting Certificates of Technical Skill

The petitioner submitted multiple certificates of technical skill level issued to the beneficiary by [REDACTED]. The fact that an individual may have attained certification in a particular job is not sufficient in itself to qualify the job as a specialty occupation. Certification can be obtained in a wide variety of jobs that would not qualify as specialty occupations such as automobile mechanic, dental assistant, medical transcriptionist, and automotive body repairer.

SAMPLE ANALYSIS 11 of 11:

- Recognition of Expertise.
- Letter from management association too broad including managers from all industries.
- Letter explains no criteria for membership.

The petitioner is a health facility that seeks to employ the beneficiary as an administrator. The petitioner's March 1, 2002 letter indicates that a candidate should possess a bachelor's degree in nursing, physical therapy, psychology, dentistry, or other related medical courses.

The record contains a letter certifying the beneficiary's membership in Management Association of the Philippines (MAP).

There is insufficient evidence that the beneficiary has recognition of expertise. USCIS finds that the letter from MAP does not establish that the beneficiary is a member of a recognized foreign or United States association or society in the specialty occupation. MAP's letter explained that it is a professional organization representing a cross-section of managers, executives, administrators, and other business professionals who hold management positions in the Philippines. The letter never claimed that MAP has criteria for membership; MAP's letter, however, explained that it serves a broad cross-section of professionals. Thus, MAP does not exclusively represent the specialty occupation of medical and health services managers.

CONCLUSION:

As such, the evidence is insufficient to establish that the beneficiary's past employment experience qualifies as a baccalaureate or higher degree or its equivalent as guided by the regulations at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v). Therefore, the beneficiary is ineligible for classification as a specialty occupation worker.

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

One Issue Denial

Consequently, the petition is hereby denied for the above stated reason.

Multiple Issue Denial

Consequently, the petition is hereby denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

**PART 2**  
**EXPERIENTIAL EVALUATION**  
**OR COMBINATION EXPERIENTIAL/ACADEMIC EVALUATION**  
**DONE BY USCIS**

**DELETE ALL HIGHLIGHTED DIRECTIVES AND DIALOGUE BOXES BEFORE  
PRINTING**

- To delete boxes, right click on the little box that appears in the upper left corner and cut. -

**NOTE TO ADJUDICATORS:** This format is not a complete denial in itself.

This is only Part 2 of a complete "Equivalency" denial analysis. See "Part 1Exp Eval by Evaluatr" for the first half of the analysis that involves an evaluation under any of four criteria. This format is used when the petitioner did not establish equivalency based on any of the other four possible evidentiary requirements, which include 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 (PONS);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

FYI: The CSC has been granted access to the OLIVE database from the Department of State. The OLIVE database is a useful tool in detecting fraudulent Indian engineering degrees. The OLIVE database is for the state of Andhra Pradesh and has data from 1993 – present for of all engineering students who have graduated from the state.

For more information go to the Adjudicative Tools folder within this directory.

**DO NOT** go straight to a denial if the OLIVE database fails to show the beneficiary.

Because this is third party information an intent-to-deny (ITD) or a request for evidence (RFE), allowing the beneficiary to rebut this information is required. Appropriate language in the RFE or ITD may include the following:

An inquiry with the United States Department of State fails to reveal a record that the beneficiary, [Insert full name], ever attended [insert college or university name].

Important: NEVER reference the OLIVE database (or any in-house sources of information, e.g., Choicepoint) in an ITD or RFE. Merely indicating that the DOS inquiry (or in the case of Choicepoint – a search of public records) is the source of the third party information should suffice.

**ISSUE:**

Although the petitioner has also failed to qualify the beneficiary pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(4), under 8 C.F.R. 214.2(h)(4)(iii)(D)(5), USCIS may make its own independent assessment of the beneficiary's credentials. In its independent assessment of the beneficiary's past employment experience for equivalency to the attainment of a baccalaureate or higher degree or its equivalent, USCIS is guided by the regulations at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v).

**RULE:**

8 C.F.R. 214.2(h)(4)(iii)(D)(5) provides:

A determination by the Service that the equivalent of the degree is 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 the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the

specialty evidenced by at least one type of documentation such as:

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

Further, 8 C.F.R. 214.2(h)(4)(ii) defines a "recognized authority" thusly:

... a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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.

**ANALYSIS:** (NOTE: The petitioner information paragraph is required only once in multiple issue denials.)

The petitioner is a [City, State] [non-profit OR for-profit] enterprise engaged in [nature of petitioner's business] with [number] employees and a gross annual income of \$ [amount]. It seeks to temporarily employ the beneficiary as [a, an] [position] for a period of [number] years.

See individual "Word" documents in this folder for examples of ANALYSES.  
Block, Copy, Paste, and Edit appropriate text here.

ATTACHMENT TO I-292

**CONCLUSION:**

As such, the evidence is insufficient to establish that the beneficiary's past employment experience qualifies as a baccalaureate or higher degree or its equivalent as guided by the regulations at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v). Therefore, the beneficiary is ineligible for classification as a specialty occupation worker.

**FINAL CONCLUSION:**

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

**One Issue Denial**

Consequently, the petition is hereby denied for the above stated reason.

**Multiple Issue Denial**

Consequently, the petition is hereby denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

**SAMPLE ANALYSIS 10 of 11:**

**• Discrediting Certificates of Technical Skill.**

The petitioner submitted multiple certificates of technical skill level issued to the beneficiary by [REDACTED]. The fact that an individual may have attained certification in a particular job is not sufficient in itself to qualify the job as a specialty occupation. Certification can be obtained in a wide variety of jobs that would not qualify as specialty occupations such as automobile mechanic, dental assistant, medical transcriptionist, and automotive body repairer.



SAMPLE ANALYSIS 5 of 11:

- Alien has a degree, but not related to the offered position.
- Transcript unclear whether alien completed three or four-year study.
- Evaluations are conclusory without discussion of documents reviewed.
- Equivalency letters reach different conclusions.

The beneficiary's bachelor's degree is not related to the field of marketing. The university transcript is unclear as to whether the beneficiary completed a three or four-year course of study. The evaluation letters provided do not specify how the evaluators arrived at their differing conclusions. One letter states that the beneficiary's university studies are equal to a U.S. bachelor's degree, and another letter evaluates her education as equal to three years of study towards a U.S. bachelor's degree. It cannot be determined how many years of studies she lacks in order to reach the equivalent of U.S. degree. USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. Dec. 820 (Comm'r 1988).

In addition, the two letters from the beneficiary's former employers do not contain enough detail to determine how many years of experience the beneficiary has in marketing management, and whether this experience was gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in marketing. Finally, the record lacks the required showing of the beneficiary's expertise in travel marketing management. The record contains only one letter from a member of the travel industry written on the beneficiary's behalf, and the writer is not shown to be a recognized authority in the specialty of marketing management. The evidence does not establish that the beneficiary is qualified to perform a specialty occupation.

**SAMPLE ANALYSIS 4 of 11:**

**• Letters of Experience not detailed:**

The documentation recounting the beneficiary's work experience consisted of statements from the following: Julian Perez, President of Marketing Advertisement S.A.; Anibal Romero of Marketing Power; Maximiliano Lopez, President of Strategic Marketing; and Maria Chejtman, Insurance Agent and Consultant.

Those statements noted the beneficiary's years of service and described generally her areas of responsibility. They are, however, insufficient in detail to determine that: the work experience included the theoretical and practical application of specialized knowledge required by the proffered position; the beneficiary'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 beneficiary has recognition of expertise in the specialty. Without more persuasive testimony, USCIS cannot determine that the beneficiary is qualified to perform the duties of the specialty occupation.

SAMPLE ANALYSIS 7 of 11:

- Expert okay.
- Experience letters from different employers are identical.
- Experience letters overlap in time as concurrent full-time employment without explanation.

The petitioner sells multimedia products. It seeks to employ the beneficiary as a market research analyst.

The record contains the following documentation relating to the beneficiary's qualifications:

- Beneficiary's college transcripts from a Filipino university reflecting five semesters and one summer of studies that included the following accounting course: "Fundamentals of Management Accounting";
- Credentials evaluation, dated September 4, 2002, indicating that the beneficiary completed the equivalent of 51 U.S. semester hours at an accredited U.S. university;
- Evaluation, dated October 4, 2002, from Harlan Spotts, Ph.D., Associate Professor of Marketing, Western New England College, who concludes that, based on his education and professional experience, the beneficiary has attained the equivalent of a U.S. bachelor's degree in business administration with a major in marketing;
- Certificate of Experience, dated July 9, 2002, from the CEO of the Taiwanese business, Longturn Aquarium Co., Ltd. who states that the beneficiary was employed from May 1, 1990 to August 31, 2001, as a marketing and sales consultant; and
- Certificate of Experience, dated August 8, 2002, from the president of the Filipino business Asia United Bank, who states, that the beneficiary was employed from May 1, 1999 to December 30, 2000, as a senior manager/ marketing representative.

USCIS turns to the criterion at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) - a determination by USCIS 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.

The record includes an evaluation from Harlan Spotts, Ph.D., Associate Professor of Marketing, Western New England College, who finds that the beneficiary's 51 credits of college coursework counts toward almost two years of a four-year college degree in liberal arts. Dr. Spotts concludes that the beneficiary's educational background and eleven years of work experience as a marketing and sales consultant are equivalent to a U.S. bachelor's degree in business administration with a major in marketing. Dr. Spotts bases his conclusion on the beneficiary's transcripts and the Certificate of Experience written by the

CEO of Longturn Aquarium Co., Ltd.

Upon review of the employment letters, it appears that the beneficiary was concurrently employed by the Filipino business, Asia United Bank, and the Taiwanese business, Longturn Aquarium Co., Ltd. At the Filipino business, his position was described as that of a senior manager/marketing representative, while at the Taiwanese business, his position was described as that of a marketing and sales consultant. The petitioner has provided no details regarding how this concurrent employment was accomplished, such as an hourly breakdown of the duties performed at the Filipino and Taiwanese businesses.

Doubt cast on any aspect of the petitioner's proof may, of course lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I. & N. Dec. 582, 591-2 (BIA 1988). Furthermore, it is noted that much of the text in both employment letters is identical. Thus, USCIS must question whether the opinions expressed in each letter are the views of each author. In view of the foregoing, Dr. Spotts' expert opinion is accorded little weight. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. Matter of Caron International, 19 I. & N. Dec 791 (Comm'r 1988).

In view of the foregoing, the expert opinion is accorded little weight. As such, the record contains insufficient evidence that the beneficiary has recognition of expertise.

**SAMPLE ANALYSIS 11 of 11:**

- **Recognition of Expertise.**
- **Letter from management association too broad including managers from all industries.**
- **Letter explains no criteria for membership.**

The petitioner is a health facility that seeks to employ the beneficiary as an administrator. The petitioner's March 1, 2002 letter indicates that a candidate should possess a bachelor's degree in nursing, physical therapy, psychology, dentistry, or other related medical courses.

The record contains a letter certifying the beneficiary's membership in Management Association of the Philippines (MAP).

There is insufficient evidence that the beneficiary has recognition of expertise. USCIS finds that the letter from MAP does not establish that the beneficiary is a member of a recognized foreign or United States association or society in the specialty occupation. MAP's letter explained that it is a professional organization representing a cross-section of managers, executives, administrators, and other business professionals who hold management positions in the Philippines. The letter never claimed that MAP has criteria for membership; MAP's letter, however, explained that it serves a broad cross-section of professionals. Thus, MAP does not exclusively represent the specialty occupation of medical and health services managers.

SAMPLE ANALYSIS 3 of 11:

- Letters of Recognition of Expertise in the specialty occupation were not from recognized authorities in the same specialty occupation.

The petitioner is an import/export business. It employs 25 people and has a gross annual income of over \$4,000,000. It seeks to temporarily employ the beneficiary as a systems analyst for a period of three years.

As the proffered position is a systems analyst, the beneficiary must possess a baccalaureate degree, or its equivalent, in computer science or management information systems.

The petitioner has not demonstrated that the beneficiary's education and experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation under 8 C.F.R. 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). The only category under which the beneficiary could qualify would be 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

Counsel submitted three expert letters from alleged recognized authorities in the same specialty occupation. The first letter is from Jay Moon, CEO of Newmerica Technology, who holds a Master of Science Degree in Computer Information Systems. He stated that the beneficiary completed coursework to achieve her Microsoft Certified Network Engineer and Cisco Certified Network Associate ratings. He also stated the she is qualified for a "task where comprehensive network knowledge is required . . . . [S]he has an ability to do the task for network system analyst." Mr. Moon was the program Director of the facility where the beneficiary received her training.

The second letter is from Jong Wha Lee, a colleague for about one year at Tele-Com Art in Korea. Jong Wha Lee stated that she and the beneficiary worked at "computer educational programming but also at managing the company's computer system." Jong Wha Lee has a Bachelor's Degree in Computer Science from Seoul Seoil University.

The third letter is from Mee Hee Jeong, an administrator at the Narae Fine Art Academy where the beneficiary worked from July 1992 to February 1995 as a teacher in "computer education, taught basic knowledge of hardware and software, developed the academy operation and management program (for registration, attendance check, students' record filing and academy affairs etc.). She was in charge of computer system development and troubleshooting for the academy computers. " Mee Hee Jeong has a Bachelor's Degree in Applied Fine Arts.

Pursuant to the regulations, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentations referenced at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v). Counsel did not submit any evidence to support the beneficiary's eligibility under this regulation other than the three letters, which are considered under 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i). This standard required "[r]ecognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation." The letter from Mr. Moon would qualify under this standard; however, the other two letters are not from "recognized authorities" and, therefore, cannot be used to document the beneficiary's experience.

**SAMPLE ANALYSIS 8 of 11:**

- Alien has a foreign degree, but has submitted no evaluation equating it to a U.S. Degree.

**USCIS conducts its own evaluation in this situation.**

- Letters of experience not detailed.

The petitioner is an engineering and architectural firm that seeks to employ the beneficiary as an architectural designer.

The record contains, in part, the following documents relating to the beneficiary: (1) a certificate from the Republic of the Philippines Eulogio "Amang" Rodriguez Institute of Science and Technology, Nagtahan, Sampaloc, Manila, which certifies that the beneficiary holds a bachelor of science degree in architecture; (2) a certificate of attendance in "computer Aided Design and Drafting"; and (3) two employment verification letters.

The petitioner stated that a candidate must hold a bachelor's degree in architecture. However, the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. Although the beneficiary possess a foreign degree, it has not been determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. 214.2(h)(4)(iii)(C)(4).

Because no evidence in the record equates the beneficiary's credentials to a United States baccalaureate or higher degree pursuant to the first four criteria set forth in 8 C.F.R. 214.2(h)(4)(iii)(D), USCIS must, therefore, determine 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 set out at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v).

Based upon the evidence in the record pertaining to the beneficiary and previously described, USCIS cannot determine whether this documentation establishes equivalence to a baccalaureate degree in architecture.

USCIS now considers the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by each employer, the beneficiary's duties did not seem to involve the theoretical and practical knowledge of architecture. One letter merely certifies the beneficiary's employment as a supervisor from December 1995 to November 1998. Although the second letter states that for two years the beneficiary had prepared working drawings, renderings, and perspectives, neither of the letters specifically describes the beneficiary's daily

activities or his level of responsibility. Thus, USCIS cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is architecture. Furthermore, neither employer indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is no evidence that the beneficiary has recognition of expertise.



SAMPLE ANALYSIS 1 of 11:

- No recognition of expertise.
- No evidence of Virgo Award.

All of the beneficiary's employment experience letters provide the beneficiary's job title and some provide a time reference of the beneficiary's duration of employment with them; however, all of them do not provide any details concerning the duties, responsibilities, or supervisory role the beneficiary had while employed with this past employers.

In addition to letters from past employers, the beneficiary provided evidence of receiving the following: Virgo Award in Journalism in 1999; the Best All-Around Excellence in Reporting 2nd Place award from the Society of Professional Journalists; and Award of Achievement in Journalism or his "outstanding contribution in bringing the Filipino [illegible] into the new millennium of 2000" from Reflections XII held at the Omni Hotel in Los Angeles, California.

A search of the Internet provided no information about the Virgo Award. A search of the Internet also provided no information about the Reflections XII award. Thus, the beneficiary also fails to present conclusive evidence that he has recognized expertise in the specialty occupation. USCIS does not have enough information about the Virgo Award, Society of Professional Journalists, or Reflections XII associations who gave awards to the beneficiary to make a determination if they are "recognized authorities" as that term is used in 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) or (v). A "recognized authority" for purposes of these regulatory provisions is defined at 8 C.F.R. 214.2(h)(ii) as follows:

Recognized authority means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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.

The record does not contain any evidence that the award associations are recognized authorities under 8 C.F.R. 214.2(h)(ii).

The beneficiary also provided information about his memberships in professional associations in his sworn affidavit which is a reference to eligibility at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(ii). He stated that he is a current member and Board Director of the Philippine National Press Club of America, an affiliate of the National Press Club in

Washington, D.C. He also stated that he was a member of the Society of Professional Journalists from 1992 through 1996. The beneficiary also asserted that he was a member of the Airport Press Corps in the past. However, the record does not contain any documentary evidence proving the beneficiary is a member of these associations. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I. & N. Dec. 190 (Reg. Comm'r 1972) (Since the burden of proof to establish eligibility for the benefits sought rests with petitioner who seeks to accord beneficiaries' classification, the contention that petitioner need only go "on record" with unsupported statements is rejected).

Thus, there is insufficient evidence that proves the beneficiary qualifies to perform the services of a specialty occupation through training or employment experience under §214.2(h)(4)(iii)(D)(5).

Under INA 291, the burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden.

SAMPLE ANALYSIS 2 of 11:

• Not enough Experience.

Since the beneficiary does not appear to have any university studies, she would need to possess twelve years of work experience to meet the equivalency ration outlined in this regulation. In addition, the petitioner would have to establish that the beneficiary's work experience also fulfills the criteria outlined in the regulations as to progressively responsible work.

The letter from ID Tours, the beneficiary's former employer, only documents four years and eight months of work experience. In addition, while the ID Tours letter details the beneficiary's two promotions within the company, and the additional letters submitted by the petitioner speak to the quality of the beneficiary's work, the beneficiary's experience does not appear adequate to meet the regulatory criteria outlined in 8 C.F.R. 214.2(h)(4)(iii)(D)(5). Without more persuasive testimony, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation.

Under INA 291, the burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden.

SAMPLE ANALYSIS 6 of 11:

- Letters of Experience not detailed.
- Not clear whether alien worked part-time or full-time.
- Not clear that alien's experience gained while working with peers, supervisors, or subordinates who have a degree or equivalent in the specialty.

The record does not contain enough information for USCIS to determine that the beneficiary has acquired the equivalent of the degree required by the specialty through a combination of education, specialized training, and/or work experience in areas related to the specialty, and that the beneficiary has achieved recognition of expertise in the specialty occupation as a result of such training and experience provided for in 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

The evidence establishing the beneficiary's work experience lacks sufficient detail to establish that the beneficiary has the equivalent of a bachelor's degree in dance. For example, the petitioner states that the beneficiary was a member of the Official Ballet Folklorico from 1973 - 1981. The record reflects that in that capacity, the beneficiary performed each Sunday, and participated in national and international tours. It is not possible from this general description, to determine the amount of time actually worked in this capacity during the dates listed, or that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty. Likewise, the petitioner listed many workshops and teaching assignments completed by the beneficiary. The record does not indicate, once again, the amount of time specifically spent in some of these endeavors, simply stating that an event was accomplished in a particular month, or listing no length of a particular event. Per regulation, USCIS must be able to determine that the beneficiary has the equivalent of 3 years of specialized training and/or work experience for each year of college-level training the beneficiary lacks in the particular specialty. The training and work experience evidence provided are insufficient to allow this analysis.

It is clear from the record that the beneficiary is highly respected as a performer, Director, and instructor in the offered specialty. That fact alone is insufficient, however, to find that the beneficiary has the equivalent of a baccalaureate in the field. The petitioner must establish one of the criteria of 8 C.F.R. 214.2(h)(4)(iii)(C). This, it has failed to do.

### SAMPLE ANALYSIS:

- Evaluator's credentials in a field other than the one being evaluated.

The evaluator has not submitted evidence setting for his/her credentials to determine educational equivalency to a bachelor's degree in this particular field of endeavor. The evaluator holds a bachelor's degree in [Insert field of study: e.g., ...education and a master's degree in educational administration.] He/she does not appear to have any education or experience in [Insert required education: e.g., ...culinary arts, hotel, and restaurant management, or a related field.]

## SAMPLE ANALYSIS:

- Expert opinions are advisory only.

While a petitioner may be able to demonstrate, through affidavits from independent experts or other means, that the nature of the position's duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree (or its equivalent), USCIS maintains discretion to use as advisory opinions statements submitted as expert testimony. Matter of Caron International, 19 I. & N. Dec. 791 (Comm'r 1988).

### SAMPLE ANALYSIS:

- Limited authorization to issue college credit.

Although the evaluator states that he/she has the authority and responsibility for the evaluation and granting of college-level credit for all international transfer students, the record does not establish that he/she is authorized to grant college-level credit for training and/or work experience in the field, nor does it indicate that his/her college has a program for granting such credit. Accordingly, the evaluation is accorded little weight.

## SAMPLE ANALYSIS:

- Evaluation based on degree in unrelated field plus experience.
- No evidence evaluator has authority to issue college-level credit based on alien's experience

The petitioner is an import/export business. It employs 25 people and has a gross annual income of over \$4,000,000. It seeks to temporarily employ the beneficiary as a systems analyst for a period of three years.

As the proffered position is a systems analyst, the beneficiary must possess a baccalaureate degree, or its equivalent, in computer science or management information systems.

It is noted that the Evaluation Report prepared by the Foundation for International Services, Inc. (FIS) and submitted with the initial filing of the petition does not meet the standards of the regulations for determining equivalency. The Evaluation purports to determine that the beneficiary has the equivalent of a bachelor's degree in computer science as a result of her education, professional training and employment experience. FIS is not qualified to prepare an evaluation of this sort as it does not: "[H]ave the 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 by the regulation. 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

FIS is qualified to provide an evaluation of the beneficiary's foreign degree pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specialized in evaluating foreign educational credentials." In the evaluation, FIS determined that the beneficiary's foreign degree is equivalent to a bachelor's degree in French and literature from an accredited college or university in the United States. This part of the evaluation is accepted, but USCIS does not accept the assessment of the beneficiary's work experience and other training as FIS is not qualified to make that assessment.

The petitioner has not demonstrated that the beneficiary's education and experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation under 8 C.F.R. 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). The only category under which the beneficiary could qualify would be 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

Counsel submitted three letters in addition to the Evaluation (which has already been discussed and will not be addressed any further). The first letter is from Jay Moon, CEO of Newmerica Technology, who holds a Master of Science Degree in Computer Information Systems. He stated that the beneficiary completed coursework to achieve her Microsoft Certified Network Engineer and Cisco Certified Network Associate ratings. He also stated the she is qualified for a "task where comprehensive network knowledge is required . . . . [S]he has an ability to do the task for network system analyst." Mr. Moon was the program Director of the facility where the beneficiary received her training.

The second letter is from Jong Wha Lee, a colleague for about one year at Tele-Com Art in



Korea. Jong Wha Lee stated that she and the beneficiary worked at "computer educational programming but also at managing the company's computer system." Jong Wha Lee has a Bachelor's Degree in Computer Science from Seoul Seoil University.

The third letter is from Mee Hee Jeong, an administrator at the Narae Fine Art Academy where the beneficiary worked from July 1992 to February 1995 as a teacher in "computer education, taught basic knowledge of hardware and software, developed the academy operation and management program (for registration, attendance check, students' record filing and academy affairs etc.). She was in charge of computer system development and troubleshooting for the academy computers." Mee Hee Jeong has a Bachelor's Degree in Applied Fine Arts.

Pursuant to the regulations, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentations referenced at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v). Counsel did not submit any evidence to support the beneficiary's eligibility under this regulation other than the three letters, which are considered under 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i). This standard required "[r]ecognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation." The letter from Mr. Moon would qualify under this standard; however, the other two letters are not from "recognized authorities" and, therefore, cannot be used to document the beneficiary's experience.

#### SAMPLE ANALYSIS:

- Evaluator okay;
- college okay; BUT
- Evaluator performed the evaluation on behalf of a private evaluation service - not okay.

Although the petitioner has submitted a letter from Mercy College that establishes that Dr. Jelen does have the authority to grant the college-level credit for various graduate and undergraduate degree programs in the Division of Business and Accounting, Dr. Jelen's evaluation was not done on behalf of Mercy College; it was done for a private educational credentials consulting firm. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. 214.2(h)(4)(iii)(D)(3). Thus, the Morningside evaluation carries no weight in these proceedings. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. Dec. 817 (Comm'r 1988).

### SAMPLE ANALYSIS:

- Evaluation in different field than what OOH says is required.

The evaluator did not conclude that the beneficiary has graduate education in one of the disciplines listed by the Occupational Outlook Handbook.

### SAMPLE ANALYSIS 1:

- Evaluation less than what OOH says is required:

Here, the evaluation of the beneficiary's foreign credentials as the equivalent of a baccalaureate degree in business administration is based on employment experience and educational background. A review of the Department of Labor's Occupational Outlook Handbook, however, finds that the graduate education is normally required for the proffered position.

### SAMPLE ANALYSIS:

- Evaluator okay, but evaluation does not explain how much college credit given;
- evaluation does not discuss alien's experience letters;
- experience letters from different employers are identical;
- experience letters overlap in time as concurrent full-time employment without explanation.

The petitioner sells multimedia products. It seeks to employ the beneficiary as a market research analyst.

The record contains the following documentation relating to the beneficiary's qualifications:

- Beneficiary's college transcripts from a Filipino university reflecting five semesters and one summer of studies that included the following accounting course: "Fundamentals of Management Accounting";
- Letter, dated September 3, 2000, from Alice J. Kaylor, Associated Academic Dean, Saint Vincent College, who concludes that, based on his educational and employment history, the beneficiary has attained the equivalent of a Bachelor of Science degree with a major in marketing from a regionally accredited U.S. college or university;
- Certificate of Experience, dated July 9, 2002, from the CEO of the Taiwanese business, Longturn Aquarium Co., Ltd. who states that the beneficiary was employed from May 1, 1990 to August 31, 2001, as a marketing and sales consultant; and
- Certificate of Experience, dated August 8, 2002, from the president of the Filipino business Asia United Bank, who states, that the beneficiary was employed from May 1, 1999 to December 30, 2000, as a senior manager/ marketing representative.

USCIS turns first to the criterion at 8 C.F.R. 214.2(h)(4)(iii)(D)(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. The record contains a letter from Alice J. Kaylor, Associate Dean of Saint Vincent College, who concludes, in part, as follows:

Based upon my review of his educational and employment history, it is my [judgment] that [the beneficiary] has attained the equivalent of a Bachelor of Science with a major in Marketing from a regionally accredited college or university in the United States. My assessment has been made through an application of the three-for-one work experience for college formula where his employment yields more than three years of equivalent education . . .

Ms. Kaylor does not provide specifics in her evaluation regarding how much credit she granted for the beneficiary's college studies. Nor does Ms. Kaylor discuss the employment letters in any detail. Upon review of the employment letters, it appears that the beneficiary was concurrently employed by the Filipino business, Asia United Bank, and the Taiwanese business, Longturn Aquarium Co., Ltd. At the Filipino business, his position was described as that of a senior manager/marketing representative, while at the Taiwanese business, his position was described as that of a marketing and sales consultant. The petitioner has provided no details regarding how this concurrent employment was accomplished, such as an hourly breakdown of the duties performed at the Filipino and Taiwanese businesses.

Doubt cast on any aspect of the petitioner's proof may, of course lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I. & N. Dec. 582, 591-2 (BIA 1988). Furthermore, it is noted that much of the text in both employment letters is identical. Thus, USCIS must question whether the opinions expressed in each letter are the views of each author. In view of the foregoing, Ms. Kaylor's opinion is accorded little weight. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. Matter of Caron International, 19 I. & N. Dec 791 (Comm'r 1988).

In view of the foregoing, the evaluation is accorded little weight. As such, the record contains insufficient evidence that the beneficiary has recognition of expertise.

## SAMPLE ANALYSIS:

- Evaluator okay - but no evidence of what evaluator looked at.

In reviewing the materials submitted to the record with regard to the beneficiary's qualifications, [Insert Evaluator's Name & Title] appears to have the authority to grant college-level credit for candidates' foreign educational credentials, training and/or employment experience at [Insert Name of College or Univ where the Evaluator is Employed].

However, the analysis of the beneficiary's employment history and level of job responsibilities is not persuasive. For example, the record is not clear as to how [Insert Evaluator's Name & Title] arrived at his or her description of the beneficiary's job responsibilities and level of responsibility at [List Names and Locations of Businesses where the Beneficiary was employed].

Upon a review of the record, no other materials are on the record with regard to the job duties of the beneficiary's previous employment, other than the beneficiary's curriculum vitae that simply lists his job titles and periods of employment with those companies.

## SAMPLE ANALYSIS:

### • Not enough work experience.

Since the beneficiary does not appear to have any university studies, she would need to possess twelve years of work experience to meet the equivalency ration outlined in this regulation. In addition, the petitioner would have to establish that the beneficiary's work experience also fulfills the criteria outlined in the regulations as to progressively responsible work.

The letter from ID Tours, the beneficiary's former employer, only documents four years and eight months of work experience. In addition, while the ID Tours letter details the beneficiary's two promotions within the company, and the additional letters submitted by the petitioner speak to the quality of the beneficiary's work, the beneficiary's experience does not appear adequate to meet the regulatory criteria outlined in 8 C.F.R. 214.2(h)(4)(iii)(D)(5). Without more persuasive testimony, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation.

Under INA 291, the burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden.



### SAMPLE ANALYSIS:

- Letters of experience not detailed;
- not clear whether alien worked part-time or full-time;
- not clear that alien's experience gained while working with peers, supervisors, or subordinates who have a degree or equivalent in the specialty

The record does not contain enough information for USCIS to determine that the beneficiary has acquired the equivalent of the degree required by the specialty through a combination of education, specialized training, and/or work experience in areas related to the specialty, and that the beneficiary has achieved recognition of expertise in the specialty occupation as a result of such training and experience provided for in 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

The evidence establishing the beneficiary's work experience lacks sufficient detail to establish that the beneficiary has the equivalent of a bachelor's degree in dance. For example, the petitioner states that the beneficiary was a member of the Official Ballet Folklorico from 1973 - 1981. The record reflects that in that capacity, the beneficiary performed each Sunday, and participated in national and international tours. It is not possible from this general description, to determine the amount of time actually worked in this capacity during the dates listed, or that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty. Likewise, the petitioner listed many workshops and teaching assignments completed by the beneficiary. The record does not indicate, once again, the amount of time specifically spent in some of these endeavors, simply stating that an event was accomplished in a particular month, or listing no length of a particular event. Per regulation, USCIS must be able to determine that the beneficiary has the equivalent of 3 years of specialized training and/or work experience for each year of college-level training the beneficiary lacks in the particular specialty. The training and work experience evidence provided are insufficient to allow this analysis.

It is clear from the record that the beneficiary is highly respected as a performer, Director, and instructor in the offered specialty. That fact alone is insufficient, however, to find that the beneficiary has the equivalent of a baccalaureate in the field. The petitioner must establish one of the criteria of 8 C.F.R. 214.2(h)(4)(iii)(C). This, it has failed to do.

## SAMPLE ANALYSIS:

- Letters of experience not detailed.

The documentation recounting the beneficiary's work experience consisted of statements from the following: [Insert names and titles of persons making statements: e.g., Julian Perez, President of Marketing Advertisement S.A.; Anibal Romero of Marketing Power; Maximiliano Lopez, President of Strategic Marketing; and Maria Chejtman, Insurance Agent and Consultant. ...etc.]

Those statements noted the beneficiary's years of service and described generally his or her areas of responsibility. They are, however, insufficient in detail to determine that: the work experience included the theoretical and practical application of specialized knowledge required by the proffered position; the beneficiary'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 beneficiary has recognition of expertise in the specialty. Without more persuasive testimony, USCIS cannot determine that the beneficiary is qualified to perform the duties of the specialty occupation

### SAMPLE ANALYSIS:

- Alien's letters of experience on plain paper, not stationary;
- no evidence of specialty occupation-type duties.

USCIS takes note of the fact that these employment letters are all written on plain paper rather than on company letterhead stationery. Therefore, it is not possible to determine whether these letters were actually written by the managers claimed. Furthermore, the writers of these letters have not provided any evidence to show that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation or 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. Therefore, the employment letters are accorded little weight.

All of the beneficiary's employment experience letters provide the beneficiary's job title and some provide a time reference of the beneficiary's duration of employment with them; however, all of them do not provide any details concerning the duties, responsibilities, or supervisory role the beneficiary had while employed with this past employers.

### SAMPLE ANALYSIS:

- Expert okay;
- experience letters from different employers are identical; and
- experience letters overlap in time as concurrent full-time employment without explanation.

The petitioner sells multimedia products. It seeks to employ the beneficiary as a market research analyst.

The record contains the following documentation relating to the beneficiary's qualifications:

- Beneficiary's college transcripts from a Filipino university reflecting five semesters and one summer of studies that included the following accounting course: "Fundamentals of Management Accounting";
- Credentials evaluation, dated September 4, 2002, indicating that the beneficiary completed the equivalent of 51 U.S. semester hours at an accredited U.S. university;
- Evaluation, dated October 4, 2002, from Harlan Spotts, Ph.D., Associate Professor of Marketing, Western New England College, who concludes that, based on his education and professional experience, the beneficiary has attained the equivalent of a U.S. bachelor's degree in business administration with a major in marketing;
- Certificate of Experience, dated July 9, 2002, from the CEO of the Taiwanese business, Longturn Aquarium Co., Ltd. who states that the beneficiary was employed from May 1, 1990 to August 31, 2001, as a marketing and sales consultant; and
- Certificate of Experience, dated August 8, 2002, from the president of the Filipino business Asia United Bank, who states, that the beneficiary was employed from May 1, 1999 to December 30, 2000, as a senior manager/ marketing representative.

USCIS turns to the criterion at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) - a determination by USCIS 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.

The record includes an evaluation from Harlan Spotts, Ph.D., Associate Professor of Marketing, Western New England College, who finds that the beneficiary's 51 credits of college coursework counts toward almost two years of a four-year college degree in liberal arts. Dr. Spotts concludes that the beneficiary's educational background and eleven years of work experience as a marketing and sales consultant are equivalent to a U.S. bachelor's degree in business administration with a major in marketing. Dr. Spotts bases his conclusion on the beneficiary's transcripts and the Certificate of Experience written by the

CEO of Longturn Aquarium Co., Ltd.

Upon review of the employment letters, it appears that the beneficiary was concurrently employed by the Filipino business, Asia United Bank, and the Taiwanese business, Longturn Aquarium Co., Ltd. At the Filipino business, his position was described as that of a senior manager/marketing representative, while at the Taiwanese business, his position was described as that of a marketing and sales consultant. The petitioner has provided no details regarding how this concurrent employment was accomplished, such as an hourly breakdown of the duties performed at the Filipino and Taiwanese businesses.

Doubt cast on any aspect of the petitioner's proof may, of course lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I. & N. Dec. 582, 591-2 (BIA 1988). Furthermore, it is noted that much of the text in both employment letters is identical. Thus, USCIS must question whether the opinions expressed in each letter are the views of each author. In view of the foregoing, Dr. Spotts' expert opinion is accorded little weight. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. Matter of Caron International, 19 I. & N. Dec 791 (Comm'r 1988).

In view of the foregoing, the expert opinion is accorded little weight. As such, the record contains insufficient evidence that the beneficiary has recognition of expertise.

### SAMPLE ANALYSIS:

- Conclusory evaluation:
- No authorization to issue college credit.

The record does not contain any corroborating evidence to support the evaluator's finding, such as 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, as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

## SAMPLE ANALYSIS:

- Evaluator says alien has equivalent of a degree from a "non-accredited" college or university in the U.S.

The petitioner is an apparel manufacturer that seeks to employ the beneficiary as a software engineer.

The record contains an evaluation from Education International, Inc. concluding that the beneficiary holds a foreign degree determined to be equivalent to a baccalaureate degree from a "non-accredited" U.S. institution. The evaluator also concludes that the beneficiary completed approximately 60 percent of the equivalent of a master's degree, specializing in computer studies, from an accredited U.S. institution. As such, the evaluator does not find that the beneficiary holds the equivalent of a computer-related degree from an accredited U.S. institution. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. 214.2(h)(4)(iii)(C)(4).

The record contains the following documentation relating to the beneficiary's qualifications:

- Memorandum to counsel, dated October 23, 2001, from Joel B. Slocum from Education International, Inc., requesting additional information and indicating that the beneficiary "may" hold the equivalent of at least a bachelor's degree or higher in computer studies;
- Memorandum to counsel, dated October 30, 2001, from Joel B. Slocum from Education International, Inc., requesting additional information and indicating that it was still not clear where the beneficiary stood with respect to attaining a master's degree;
- Statement of Evaluation, dated December 5, 2001, from Joel B. Slocum from Education International, Inc., concluding that the beneficiary holds a foreign degree determined to be equivalent to a baccalaureate degree from a "non-accredited" U.S. institution, and the beneficiary completed approximately 60 percent of the equivalent of a master's degree, specializing in computer studies, from an accredited U.S. institution;
- Various documents demonstrating that the beneficiary completed Master's level computer-related courses at Aalborg University;
- Copies of a bachelor's degree in computer science, transcript, and related documents issued to the beneficiary by the Americanos College;
- Microsoft Examinations Score Report, dated March 28, 1999, reflecting that the beneficiary passed the examination on Networking Essentials;
- Letter, dated August 28, 1998, from Soren Haugaard of Bosch Telecom Danmark A/S, who states, in part, that the beneficiary was employed from July 1 through August 31, 1998 "In a student job . . . as supervisor . . . with analysis of software

modules written in ansi C . . . . "; and

- Letter, dated December 4, 1998, from an associate professor of Aalborg University, who states, in part, that the beneficiary was employed as a student assistant from September 1998 until June 1999, "working in a team with another student and successfully completing the development of a web-application prototype."

Counsel states, in part, that the record contains a letter from the International Student Coordinator of Aalborg University maintaining that, in order to enroll in the master's program at Aalborg University, the beneficiary had to submit evidence of a "B.Sc in electronic engineering or computer science from a recognized university...." Counsel concludes that, as the evaluator from Education International, Inc., recognized Aalborg as an accredited institution, then the Americanos College must also be accredited, because Aalborg University accepted the beneficiary's credits from that institution. Counsel's assertion is noted. The record, however, does not include any corroborating evidence, such as a statement from the evaluator of Education International, Inc. explaining why he concluded that Americanos College was a non-accredited institution and conceding that such assessment was made in error, as asserted by counsel.

Doubt cast on any aspect of the petitioner's proof may, of course lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I. & N. Dec. 582, 591-2 (BIA 1988).



## SAMPLE ANALYSIS:

- Evaluation is useless without a copy of the alien's degree or transcripts.

The petitioner is a rehabilitation care provider. It employs 89 people and has a gross annual income of \$3.5 million. It seeks to temporarily employ the beneficiary as an accountant.

The first issue to be considered is whether the beneficiary meets any of the criteria listed in 8 C.F.R. 214.2(h)(4)(iii)(C). As the proffered position is an accountant, the beneficiary must possess a baccalaureate degree, or its equivalent, in accounting or a related field.

Counsel asserts that the educational evaluation on the record established the beneficiary's qualifications. Counsel also refers to an employment certificate, and the beneficiary's resume, as well as letters from two former colleagues of the beneficiary's, and finally a letter written by a certified public accountant (CPA) who states that the beneficiary's accounting skills and qualifications are equal to those of a U.S. CPA.

It is noted that the evaluation report prepared by Morningside Evaluations and Consulting does not meet the regulatory standards for determining equivalency. The evaluation purports to determine that the beneficiary has the equivalent of a bachelor's degree in accounting as a result of his education, professional training and employment experience.

Morningside determined that the beneficiary's foreign degree is the equivalent to a bachelor's degree from an accredited college or university in the United States. Given that the record does not contain a copy of the beneficiary's diploma, and the copy of his college transcript does not indicate that he graduated, this evaluation is unsupported by the record and cannot be given any weight. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. Dec. 817 (Comm'r 1988).

### **SAMPLE ANALYSIS:**

- **Evaluation less than what OOH says is required:**

Here, the evaluation of the beneficiary's foreign credentials as the equivalent of a baccalaureate degree in business administration is based on employment experience and educational background. A review of the Department of Labor's Occupational Outlook Handbook, however, finds that the graduate education is normally required for the proffered position.

### SAMPLE ANALYSIS:

- Evaluation in different field than what OOH says is required.

The evaluator did not conclude that the beneficiary has graduate education in one of the disciplines listed by the Occupational Outlook Handbook.

## SAMPLE ANALYSIS:

- No record of transcripts to show how evaluation done;
- No evidence evaluator has authority to issue college-level credit based on alien's experience.

In its initial petition, the petitioner submitted copies of the beneficiary's high school diploma and certificates for training courses that she attended in Australia in travel consultants, hotel/motel reception, and front office procedures. The petitioner also submitted an educational equivalency document from American Evaluation Institute, Long Beach, California. Dr. Mathew Clark, directing evaluator, stated that, based upon her transcripts and certificates, the beneficiary had attained the equivalent of a bachelor of science degree in business administration from an accredited U.S. university.

Upon review of the record, the educational equivalency document from American Evaluation Institute is inadequate documentary evidence on two grounds. First, the record is devoid of any transcripts of courses or any supplemental information with regard to the beneficiary's training courses, such as the duration of such courses and the academic level of the same courses. Without such supplemental information, it is not possible to determine how the evaluator reached his conclusion that the beneficiary had the equivalent of a U.S. university degree in business administration.

Second, there is no evidence on the record that the evaluator from American Evaluation Institute has the 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 grant such credit based on an individual's training and/or work experience, as required by 8 C.F.R.

214.2(h)(4)(iii)(D)(1). USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. 817 (Comm'r 1988). Accordingly, the educational equivalency document from American Evaluation Institute that was submitted by petitioner with the original petition is given no weight. Without such an evaluation, the petitioner has not satisfied the regulatory criterion outlined in 8 C.F.R.

214.2(h)(4)(iii)(C)(2). The remaining criteria are not applicable to the instant petition.

#### SAMPLE ANALYSIS:

- Alien has a foreign degree, but has submitted no evaluation equating it to a U.S. degree.
- USCIS conducts its own evaluation in this situation.
- Letters of experience not detailed.

The petitioner is an engineering and architectural firm that seeks to employ the beneficiary as an architectural designer.

The record contains, in part, the following documents relating to the beneficiary: (1) a certificate from the Republic of the Philippines Eulogio "Amang" Rodriguez Institute of Science and Technology, Nagtahan, Sampaloc, Manila, which certifies that the beneficiary holds a bachelor of science degree in architecture; (2) a certificate of attendance in "computer Aided Design and Drafting"; and (3) two employment verification letters.

The petitioner stated that a candidate must hold a bachelor's degree in architecture. However, the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. Although the beneficiary possess a foreign degree, it has not been determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. 214.2(h)(4)(iii)(C)(4).

Because no evidence in the record equates the beneficiary's credentials to a United States baccalaureate or higher degree pursuant to the first four criteria set forth in 8 C.F.R. 214.2(h)(4)(iii)(D), USCIS must, therefore, determine 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 set out at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v).

Based upon the evidence in the record pertaining to the beneficiary and previously described, USCIS cannot determine whether this documentation establishes equivalence to a baccalaureate degree in architecture.

USCIS now considers the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by each employer, the beneficiary's duties did not seem to involve the theoretical and practical knowledge of architecture. One letter merely certifies the beneficiary's employment as a supervisor from December 1995 to November 1998. Although the second letter states that for two years the beneficiary had prepared working drawings, renderings, and perspectives, neither of the letters specifically describes the beneficiary's daily

activities or his level of responsibility. Thus, USCIS cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is architecture. Furthermore, neither employer indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is no evidence that the beneficiary has recognition of expertise.

### SAMPLE ANALYSIS:

- No recognition of expertise;
- No evidence that alien is a member of associations; or
- No evidence that alien is a recipient of awards as claimed.

All of the beneficiary's employment experience letters provide the beneficiary's job title and some provide a time reference of the beneficiary's duration of employment with them; however, all of them do not provide any details concerning the duties, responsibilities, or supervisory role the beneficiary had while employed with this past employers.

In addition to letters from past employers, the beneficiary provided evidence of receiving the following: Virgo Award in Journalism in 1999; the Best All-Around Excellence in Reporting 2nd Place award from the Society of Professional Journalists; and Award of Achievement in Journalism or his "outstanding contribution in bringing the Filipino [illegible] into the new millennium of 2000" from Reflections XII held at the Omni Hotel in Los Angeles, California.

A search of the Internet provided no information about the Virgo Award. A search of the Internet also provided no information about the Reflections XII award. Thus, the beneficiary also fails to present conclusive evidence that he has recognized expertise in the specialty occupation. USCIS does not have enough information about the Virgo Award, Society of Professional Journalists, or Reflections XII associations who gave awards to the beneficiary to make a determination if they are "recognized authorities" as that term is used in 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) or (v). A "recognized authority" for purposes of these regulatory provisions is defined at 8 C.F.R. 214.2(h)(ii) as follows:

Recognized authority means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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.

The record does not contain any evidence that the award associations are recognized authorities under 8 C.F.R. 214.2(h)(ii).

The beneficiary also provided information about his memberships in professional associations in his sworn affidavit which is a reference to eligibility at 8 C.F.R.

214.2(h)(4)(iii)(D)(5)(ii). He stated that he is a current member and Board Director of the Philippine National Press Club of America, an affiliate of the National Press Club in Washington, D.C. He also stated that he was a member of the Society of Professional Journalists from 1992 through 1996. The beneficiary also asserted that he was a member of the Airport Press Corps in the past. However, the record does not contain any documentary evidence proving the beneficiary is a member of these associations. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I. & N. Dec. 190 (Reg. Comm'r 1972) (Since the burden of proof to establish eligibility for the benefits sought rests with petitioner who seeks to accord beneficiaries' classification, the contention that petitioner need only go "on record" with unsupported statements is rejected).

Thus, there is insufficient evidence that proves the beneficiary qualifies to perform the services of a specialty occupation through training or employment experience under §214.2(h)(4)(iii)(D)(5).

Under INA 291, the burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden.



## SAMPLE ANALYSIS:

- Letters of recognition of expertise in the specialty occupation were not from recognized authorities in the same specialty occupation.

The petitioner is an import/export business. It employs 25 people and has a gross annual income of over \$4,000,000. It seeks to temporarily employ the beneficiary as a systems analyst for a period of three years.

As the proffered position is a systems analyst, the beneficiary must possess a baccalaureate degree, or its equivalent, in computer science or management information systems.

The petitioner has not demonstrated that the beneficiary's education and experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation under 8 C.F.R. 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). The only category under which the beneficiary could qualify would be 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

Counsel submitted three expert letters from alleged recognized authorities in the same specialty occupation. The first letter is from Jay Moon, CEO of Newmerica Technology, who holds a Master of Science Degree in Computer Information Systems. He stated that the beneficiary completed coursework to achieve her Microsoft Certified Network Engineer and Cisco Certified Network Associate ratings. He also stated she is qualified for a "task where comprehensive network knowledge is required . . . [S]he has an ability to do the task for network system analyst." Mr. Moon was the program Director of the facility where the beneficiary received her training.

The second letter is from Jong Wha Lee, a colleague for about one year at Tele-Com Art in Korea. Jong Wha Lee stated that she and the beneficiary worked at "computer educational programming but also at managing the company's computer system." Jong Wha Lee has a Bachelor's Degree in Computer Science from Seoul Seoil University.

The third letter is from Mee Hee Jeong, an administrator at the Narae Fine Art Academy where the beneficiary worked from July 1992 to February 1995 as a teacher in "computer education, taught basic knowledge of hardware and software, developed the academy operation and management program (for registration, attendance check, students' record filing and academy affairs etc.). She was in charge of computer system development and troubleshooting for the academy computers." Mee Hee Jeong has a Bachelor's Degree in Applied Fine Arts.

Pursuant to the regulations, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentations referenced at 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i) - (v). Counsel did not submit any evidence to support the beneficiary's eligibility under this regulation other than the three letters, which are considered under 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i). This standard required "[r]ecognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation." The letter from Mr. Moon would qualify under this standard; however, the other two letters are not from "recognized authorities" and, therefore, cannot be used to document the beneficiary's experience.

### SAMPLE ANALYSIS:

- No evidence evaluator has authority to issue college-level credit based on alien's experience;
- Credentials evaluation services may only evaluate foreign educational credentials, not training or work experience;
- No evidence that letter from American Institute of Certified Public Accountants is a nationally recognized professional association or society for accountants;

The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. 214.2(h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted an evaluation from Jack E. Hoover of the Foundation for International Services, Inc. Mr. Hoover states that the beneficiary has the equivalent of a Bachelor's degree in Business Administration with a specialization in accounting from an accredited college or university in the United States. Mr. Hoover bases his opinion on an evaluation from Dr. Gary L. Karns, a professor at Seattle Pacific University for 21 years, formerly serving as Associate Dean of the School of Business and Economics, and as the Director of Graduate Programs. The record does not establish that Dr. Karns is presently employed by Seattle Pacific University. Dr. Karns opines that the beneficiary has the equivalent of a Bachelor's degree in Business Administration, specializing in accounting, from a university in the United States. Both equivalency evaluations are based solely on the beneficiary's prior work experience.

The record does not, however, establish that either evaluator is qualified to render an opinion on degree equivalence based upon the beneficiary's work experience. There is no proof in the record that either evaluator possesses authority to grant college-level credit 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 by 8 C.F.R. 214.2(h)(4)(iii)(D)(1). Counsel further asserts that the evaluations should be accepted by USCIS pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(3), as they are from a reliable credentials evaluation service. Credentials evaluation services may only evaluate an individuals foreign educational credentials, however, not training or work experience.

USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I. & N. 817 (Comm'r 1988). The evaluations will, accordingly, be given little weight.

In addition to the experiential evaluations submitted, the petitioner submitted evidence that the beneficiary is a member of the American Institute of Certified Public Accountants (AICPA). The record fails to establish that the AICPA is a nationally-recognized professional association or society for accountants. The record is silent as to what qualifications an individual must possess to obtain membership with that organization. As such, the petitioner has also failed to qualify the beneficiary pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(4).

### SAMPLE ANALYSIS:

- Discrediting Certificates of Technical Skill

The petitioner submitted multiple certificates of technical skill level issued to the beneficiary by [REDACTED]. The fact that an individual may have attained certification in a particular job is not sufficient in itself to qualify the job as a specialty occupation. Certification can be obtained in a wide variety of jobs that would not qualify as specialty occupations such as automobile mechanic, dental assistant, medical transcriptionist, and automotive body repairer.