



U.S. Citizenship
and Immigration
Services

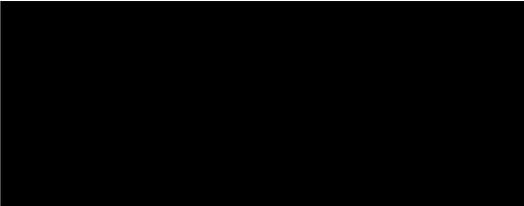


FILE: WAC 03 089 53900 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent identity theft
INVESTIGATION

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a manufacturer and supplier of poultry specialty food products that seeks to employ the beneficiary as a market research analyst. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel states that the proffered position qualifies as a specialty occupation and submits additional and previously submitted evidence.

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

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

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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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

The petitioner is seeking the beneficiary's services as a market research analyst. Evidence of the beneficiary's duties includes: the Form I-129; attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail organizing and collecting market information; planning, designing, and implementing customer surveys; studying, gathering, and interpreting survey results and providing the marketing and sales departments with findings; forecasting market trends such as sales and product life cycles; preparing reports; and making recommendations. The petitioner elaborated on the job duties in a document entitled "Job Title: Marketing Research Analyst, Job Description," submitted in the response to the request for evidence. The petitioner's January 22, 2003 letter indicated that a candidate must possess a "bachelor[s] degree or higher in [b]usiness [a]dministration."

The director determined that the proffered position was not a specialty occupation. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the majority of the proposed duties are performed by advertising, marketing, promotions, public relations, and sales managers, occupations that do not require a bachelor's degree in a specific specialty. The director mentioned that the submitted evidence did not indicate that the petitioner normally required applicants to possess baccalaureate or higher degrees in the field or that the proposed duties and level of responsibility exceed what is normally encountered in the occupational field.

On appeal, counsel claims that the petitioner's declaration, the *Handbook*, the *California Occupational Guide (COG)*, and the *Dictionary of Occupational Titles (DOT)* support the claim that the proposed position is a specialty occupation. Counsel contends that a baccalaureate or higher degree is normally required for the proffered position, and that the position's duties and responsibilities are complex.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As previously mentioned, CIS interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Although the petitioner stated that it requires a candidate to possess a “bachelor[’s] degree or higher in [b]usiness [a]dministration,” the petitioner does not indicate a specific emphasis of study in the field of business administration. As stated by the court in *Matter of Micheal Hertz Assocs., 19 I&N Dec. 558, 560 (Comm. 1988)*, for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

Because the petitioner simply requires a bachelor’s or higher degree in business administration, without indicating a specific field of concentration, it cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that its degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the evidentiary record reveals that the petitioner simply requires a bachelor’s or higher degree in business administration without specifying a particular emphasis. Accordingly, the petitioner cannot establish that it has a baccalaureate or higher degree requirement in a specific specialty that is common to the industry or that its position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The petitioner, therefore, fails to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the employer establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position. As discussed, because the record discloses that the petitioner merely requires a bachelor’s degree or higher in business administration, without indicating a specific emphasis, it fails to establish the third criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record evinces that the petitioner has not established this criterion because the knowledge required to perform the duties of the position is not associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again,

although the petitioner requires that a candidate possess a bachelor's degree or higher in business administration, it failed to indicate a specific area of concentration in business administration. Accordingly, the petitioner cannot establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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