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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

A2

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **DEC 03 2010**

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:

[REDACTED]

**INSTRUCTIONS:**

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Perry Rhew*  
for **Perry Rhew**  
Chief, Administrative Appeals Office

**DISCUSSION:** The director of the California 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 software translation and localization consulting company. It seeks to employ the beneficiary as a localization business development specialist 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 based on his determination that the proffered position was not a specialty occupation.

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

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

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) 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.

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

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular

position is so complex or unique that it can be performed only by an individual with a degree;

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner states that it "provides full service consulting services for companies trying to extend their global marketing reach in Japan." It further claimed that it maintains "professional, experienced translators and consultants who have remarkable experience in their special areas of translation expertise," and claims that its main business objectives are to translate clients' software and provide localization services.

Regarding the proposed duties of the beneficiary, the petitioner claimed that the beneficiary would be responsible for developing, coordinating and implementing strategic or tactical plans for business growth. Regarding her specific duties, the petitioner stated:

As a head of day-to-day operations, the candidate must analyze business strategies, and process, identify and develop innovative solutions to problems. The incumbent will analyze emerging trends in US and Japanese markets and culture to forecast demand for particular types or brands of products and make recommendations to management about advertising and purchasing decisions. The incumbent will also be required to analyze competitor's marketing strategies via publicly available information, such as websites, brochures, business statements, etc. and alert management to areas where competitive pressures may require action on their part. Another key aspect will be analysis of input from our clients, which the candidate will also analyze in order to determine issues to be addressed to improve customer satisfaction and make overall operations more efficient. The candidate will also analyze customer's interests and use such information to develop internal and external promotional plans to increase customer satisfaction. Accordingly, the candidate will address the issues with our technical department to add or change features to increase the interest of our customers and buying power. The candidate will also help the company's financial plan to better understand profit levers and balance sheet implications of various marketing and pricing strategies. He/she must be able to assess the application of various innovative business strategies in an international e-Commerce environment.

The petitioner concluded by claiming that the minimum educational requirement in order to perform these duties was a bachelor's degree in Business Administration, Marketing, Management, Economics or other related field. The petitioner also indicated that since many of its customers and partners conduct business in Japanese, the ability to read, speak and write both Japanese was important for the position. Regarding the beneficiary's background, the petitioner indicated that she possessed a bachelor's degree in economics from Chiba University in Japan, and indicated that she was a native Japanese speaker who was fluent in English.

The director found this initial evidence insufficient to demonstrate that the proffered position was that of a specialty occupation. Consequently, the director issued an RFE dated April 19, 2009, which requested additional information pertaining to the petitioner's organizational structure and previous hiring practices with regard to the proffered position. In a letter dated May 13, 2009, the petitioner addressed the director's queries.

The petitioner explained in its letter that it meets with client companies' representatives and provides an in-depth analysis of their projects. It states that the next step involves the localization business development specialist (the beneficiary), who then forms a project team to plan and analyze the clients' technical translation needs. The petitioner also provided a more specific overview of the duties of the proffered position, noting that an understanding of Japanese industry and Japanese business models is crucial. The petitioner claimed that the most important aspects of the proffered position involve analyzing business strategies; developing innovative solutions to operation problems; analyzing clients' interests and localization needs; and determining new products/services and identifying potential sales for different localization needs. The petitioner also provided the following list of duties:

- Provide input in the development of the company's business operation and support business expansion in terms of [the petitioner's] various localization and translation services[.]

- Research and develop methods to market Japanese localization and software needs in the United States providing [the petitioner's] strategic direction and executions[.]
- Research and analyze the methods to promote its services through its website.
- Collate and report compiled information to our translation team to develop user-friendly and easy-to-navigate software instruction.
- Research and analyze marketing strategy and pricing of [the petitioner's] competitors through publicly available documents and data (competitor's target clients, geographical location, etc.) and recommend fair pricing to effectively market [the petitioner's] services in the United States.

Finally, the petitioner submitted evidence in support of the contention that a bachelor's degree for the proffered position and similar positions was the standard minimum educational requirement in the industry.

On May 29, 2009, the director denied the petition. Specifically, the director concluded that the duties of the proffered position were akin to a marketing manager, and noted that a degree in a specific specialty was not required for such a position. Moreover, the director found no evidence to establish that the industry standard required a bachelor's degree as the minimum requirement for entry into the proffered position, and likewise noted that, in the alternative, the petitioner lacked the organizational complexity to employ the beneficiary in the related position of market research analyst.

On appeal, counsel asserts that the beneficiary's position is both unique and irreplaceable, and thus satisfies the requirements for a specialty occupation position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

In determining whether the proffered position qualifies as a specialty occupation, the AAO first turns to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations. The *Handbook* does not contain an occupation with the specific title of localization business development specialist. However, upon review of the described duties, the AAO concurs with the director's finding that the proffered position encompasses aspects of both the market research analysts and marketing managers occupational classifications as described in the *Handbook*. As will now be discussed, however, the *Handbook* indicates that neither occupational category normally requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The chapter "Market and Survey Researchers" in the 2010-2011 *Handbook* includes this description of market research analysts:

*Market and survey researchers* gather information about what people think. Market research analysts help companies understand what types of products people want, determine who will buy them and at what price. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze data on past sales to predict future sales.

Market research analysts devise methods and procedures for obtaining the data they need by designing surveys to assess consumer preferences. While a majority of surveys are conducted through the Internet and telephone, other methods may include focus group

discussions, mail responses, or setting up booths in public places, such as shopping malls, for example. Trained interviewers usually conduct the surveys under a market research analyst's direction.

\* \* \*

**Work environment.** Market and survey researchers generally have structured work schedules. They often work alone, writing reports and preparing statistical charts on computers, but they sometimes may be part of a research team. Market researchers who conduct personal interviews have frequent contact with the public. Most work under pressure of deadlines and tight schedules, which may require overtime. Travel may be necessary.

The following excerpt from the “Training, Other Qualifications, and Advancement” section of the 2010-2011 *Handbook's* chapter “Market and Survey Researchers” indicates that a major or concentration in a specific specialty is not a normal aspect of the baccalaureate threshold that exists for entry into many market research analyst positions:

**Education and training.** A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree is usually required for more technical positions.

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take social science courses, including economics, psychology and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines.

While in college, aspiring market and survey researchers should gain experience gathering and analyzing data, conducting interviews or surveys, and writing reports on their findings. This experience can prove invaluable toward obtaining a full-time position in the field, because much of the work may center on these duties. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or marketing research firms prior to graduation.

The excerpt indicates that a bachelor's degree is a normal minimum entry requirement for the market and survey researchers occupation, but not that the degree must be in a specific specialty.

The AAO also notes that, while the 2010-2011 *Handbook's* “Job prospects” subsection states that “the best” market-and-survey-researcher opportunities for bachelor's degree holders are for those “with good quantitative skills, including a strong background in mathematics, statistics, survey design, and computer science,” it does not specify any particular academic majors or types of bachelor's degrees as requirements for entry into the occupation.

The 2010-2011 edition of the *Handbook* includes the following descriptive information about marketing managers as an occupational group:

Advertising, marketing, promotions, public relations, and sales managers coordinate their companies' market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities. In small firms the owner or chief executive officer might assume all advertising, promotions, marketing, sales, and public relations responsibilities. In large firms, which may offer numerous products and services nationally or even worldwide, an executive vice president directs overall advertising, marketing, promotions, sales, and public relations policies. (Executive vice presidents are included in the *Handbook* statement on top executives.)

\* \* \*

*Marketing managers.* Marketing managers work with advertising and promotion managers to promote the firm's or organization's products and services. With the help of lower level managers, including *product development managers* and *market research managers*, marketing managers estimate the demand for products and services offered by the firm and its competitors and identify potential markets for the firm's products. Marketing managers also develop pricing strategies to help firms maximize profits and market share while ensuring that the firms' customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and they oversee product development.

The *Handbook* indicates that a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager jobs. Specifically, the *Handbook* states:

***Education and training.*** For marketing, sales, and promotions management positions, employers often prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, management, economics, accounting, finance, mathematics, and statistics are advantageous. In addition, the completion of an internship while the candidate is in school is highly recommended. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

\* \* \*

Most advertising, marketing, promotions, public relations, and sales management positions are filled through promotions of experienced staff or related professional personnel. For example, many managers are former sales representatives; purchasing agents; buyers; or product, advertising, promotions, or public relations specialists. In small firms, in which the

number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

While the *Handbook* indicates that a bachelor's degree in a wide variety of specialties is preferred, it does not indicate that a degree in a specific specialty is the minimum requirement for entry into the position. A petitioner must demonstrate that the proffered position requires that a precise and specific course of study that relates directly and closely to the position in question.

As the *Handbook* indicates that neither the market research analyst nor the marketing manager aspects of the proffered position normally require at least a baccalaureate, or the equivalent, in a specific specialty, it is incumbent on the petitioner to establish that its particular position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties. This the petitioner has failed to do. In this regard, the AAO finds that the descriptions of the duties comprising the proffered position are limited to generalized and generic functions (such as "[p]rovide input in the development of the company's business operation," "support business expansion in terms of [the petitioner's] various localization and translation services," and "[r]esearch and develop methods to market Japanese localization and software needs") that convey neither the substantive nature of the work that the beneficiary would actually perform nor that performance of the position would involve theoretical and practical application of highly specialized knowledge requiring the attainment of at least a bachelor's degree, or the equivalent, in a specific specialty.

As the evidence of record does not establish that the particular position proffered here is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, the AAO finds that the petitioner has not satisfied either of the two alternate prongs of the second criterion – the degree requirement is common to the industry in parallel positions among similar organizations, or the position is so complex or unique that it can only be performed by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty.

In response to the director's RFE, the petitioner submitted a list of persons that the petitioner identifies as being employed in positions similar to the one proffered here, and their degrees, along with copies of these persons' H-1B approval notices issued by USCIS. Aside from the fact that the names of the employers are listed on the approval notices, the petitioner provides no documentation to support a finding that these companies are similar to the petitioner. Moreover, there is no independent evidence to support findings that the individuals identified on this list actually hold the degrees claimed and that the asserted educational credentials represent an industry-wide requirement regarding positions shown to be similar to the proffered position among organizations similar to the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner has likewise failed to establish that the proffered position is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty. As discussed previously, the description of duties in the record is generalized and summarizes the standard duties outlined in the *Handbook's* description of duties. No independent documentation has been provided to demonstrate that the beneficiary's duties as a localization business development specialist for the petitioner meet this standard, and - as reflected in this decision's earlier discussion of the generalized and generic terms in which the duties comprising the proffered position are described - the evidence in the record of proceeding does not convey complexity or uniqueness as distinguishing factors of the proffered position.<sup>1</sup>

For the reasons discussed above, the petitioner has failed to establish its position as a specialty occupation under either of the alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): the employer normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

In this matter, the petitioner has failed to submit evidence demonstrating that it has a history of employing degreed individuals for the position of localization business development specialist. In response to the RFE, the petitioner claimed that it employed two persons in similar positions. Specifically, it claimed that it employed [REDACTED] as a computer software localization specialist, and [REDACTED] as a technical translator, and claims that both employees possess bachelor's and master's degrees in electrical engineering. This claim is insufficient for two reasons. First, by virtue of title alone, the positions of computer software localization specialist and technical translator do not appear to be akin to the proffered position of localization business development specialist or a marketing manager. Second, the petitioner submits no evidence to establish that a relationship exists between such positions, nor does it submit any evidence of the educational credentials for these employees. Accordingly, the petitioner failed to establish the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>2</sup> The petitioner's claimed degree requirement for the proffered position is not evidence of its normal hiring practices.

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<sup>1</sup> In this regard, the AAO notes the petitioner's assertion of the uniqueness arising from its requirement for a person fluent in Japanese and familiar with its industries. However, the record of proceeding does not establish that the language and industry-knowledge elements of the proffered position require the attainment of at least a bachelor's degree, or the equivalent, in a particular position.

<sup>2</sup> Further, to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

In assessing whether the petitioner has met its burden with regard to this criterion, the AAO has again reviewed the duties of the proffered position, as described by the petitioner in its initial letter of support and in its response to the director's RFE, to determine whether they reflect a higher degree of knowledge and skill than would normally be required of a marketing manager/localization business development specialist or represent an amalgam of jobs that require different skills and qualifications. Further, the AAO has also considered counsel's statements on appeal regarding the complexity of the proffered position.

As reflected in this decision's earlier discussions regarding the proffered duties, the petitioner's description of them is limited to terms of generalized and generic functions. These do not convey the duties with sufficient specificity to establish any particular level of specialization and complexity that may inhere in them, and, therefore, they necessarily fail to establish that the duties are sufficiently specialized and complex as to require any particular level of highly specialized knowledge in a specific specialty. Further, the record of proceeding contains no explication or documentary evidence showing that the proffered position's specific duties are so specialized and complex that their performance requires the knowledge specified in this criterion.

Therefore, for the reasons discussed above, the petitioner has failed to establish the proffered position as 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.

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To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.