

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **MAY 03 2013**

OFFICE: CALIFORNIA SERVICE CENTER . FILE: [Redacted]

IN RE: Petitioner:
 Beneficiary:

[Redacted]

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

ON BEHALF OF PETITIONER:

[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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director initially denied the nonimmigrant visa petition on September 26, 2012. Upon further review, the director subsequently reopened the matter on Service motion on December 21, 2012 in order to afford the petitioner an additional opportunity to establish its eligibility for the benefit sought. In the reopened proceeding, however, the director once again concluded that the petition should be denied and certified her recommended decision to the Administrative Appeals Office (AAO) for review on March 13, 2013. The director's decision recommending denial of the petition will be withdrawn. The petition will be approved.

On the Form I-129 visa petition, the petitioner describes itself as a 120-employee telecommunications recruiting company¹ established in 2009. In order to employ the beneficiary in what it designates as a Director of Recruiting position,² the petitioner seeks to classify her as an H-1B 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's initial September 26, 2012 decision denying the petition was based upon her determination that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation. In her March 13, 2013 Notice of Certification, which is now before the AAO, the director has again recommended denial of the petition on that basis. In response to the director's recommend denial, counsel for the petitioner submitted a brief to the AAO on April 15, 2013 in which she asserted that the proffered position meets the statutory and regulatory definitions of the term "specialty occupation" for purposes of establishing eligibility for H-1B nonimmigrant classification.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's first request for additional evidence (RFE); (3) the petitioner's response to the first RFE; (4) the director's initial letter denying the petition; (5) the director's Service motion combined with a second RFE; (6) the petitioner's response to the Service motion and second RFE; (7) the director's Form I-290C, Notice of Certification; and (8) the petitioner's response to the Form I-290C, Notice of Certification.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has overcome the director's proposed ground for denying this petition. Consequently, the director's decision recommending denial of the petition will be withdrawn, and the petition will be approved.

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 541612, "Human Resources Consulting Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541612 Human Resources Consulting Services," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (accessed Apr. 30, 2013).

² The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O*NET/OES) Code 11-3121 and the associated Occupational Classification of "Human Resources Managers." In addition, while the certified prevailing wage for the proffered position is based on the private Towers Watson survey, it is commensurate with the wage for a Level IV ("fully competent") position within this occupational category.

To meet its burden of proof in establishing that the proffered position constitutes a specialty occupation, the petitioner must establish that the employment 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 [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also*

COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp., 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in 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 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position's title. The specific duties of the position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether 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.

The record contains a comprehensive description of the duties of the proffered position, and the AAO agrees with counsel and the petitioner that the duties proposed for the beneficiary generally align with those of human resources managers as such positions are described in the U.S. Department of Labor's *Occupational Outlook Handbook* (the *Handbook*),³ a resource upon which the AAO routinely relies for the educational requirements of particular occupations. However, the AAO does

³ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are from the 2012-13 edition available online.

not concur with counsel that the findings of the DOL articulated in the *Handbook* with regard to the educational credentials normally required for entry into the field of human resources management support a determination that the petitioner has met the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

In pertinent part, the *Handbook* states the following with regard for entry into the field of human resources management:

Human resources managers usually need a bachelor's degree in human resources or business administration. Alternatively, as not all undergraduate programs offer a degree in human resources, candidates can get a bachelor's degree in another field and take courses in human resources subjects, such as labor or industrial relations, organizational development, or industrial psychology. Some positions are also filled by experienced individuals with other backgrounds, including finance, business management, education, and information technology.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Human Resources Managers," <http://www.bls.gov/oooh/management/human-resources-managers.htm#tab-4> (accessed Apr. 30, 2013).

These findings from the *Handbook* do not indicate that a bachelor's degree, or the equivalent, in a specific specialty, is normally required for entrance into this occupational category. To the contrary, the *Handbook* specifically states that a degree from a range of majors, including human resources, business administration, finance, business management, education, and information technology, would be acceptable, and it indicates further that a bachelor's degree from *any* field of study would suffice so long as courses in human resources subjects had been taken. *See id.* Thus, rather than specifying a bachelor's degree in a specific specialty, or its equivalent, as a normal minimum entry requirement for employment as a human resources manager, the *Handbook* instead indicates that a wide spectrum of majors and backgrounds would suffice for entry into this occupational category.

Furthermore, the *Handbook's* statement that a bachelor's degree in business administration would be sufficient preparation for a career as a human resources manager constitutes an additional reason why that resource does not aid the petitioner in establishing its proffered position as a specialty occupation. A petitioner must demonstrate that a proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position

requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (1st Cir. 2007).⁴

Although the *Handbook* does not support a finding that that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the field of human resources management, the comprehensive job description submitted by the petitioner,⁵ coupled with the sizeable amount of probative and reliable evidence submitted in its support, establishes that the nature of the specific duties proposed for this particular beneficiary is so specialized and complex that the knowledge required to perform them is usually associated with at least a U.S. bachelor's degree in human resources management or its equivalent, as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Further, and for the reasons discussed herein, the AAO finds that petitioner has established by a preponderance of the evidence that the particular position being offered to the beneficiary qualifies for classification as a specialty occupation as that term is defined by section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

Finally, the AAO has reviewed the qualifications of the beneficiary, and it finds her qualified to perform the duties of the proffered position. The beneficiary was awarded a bachelor's degree in human resource management by [REDACTED] in 2000, and a reliable evaluation equates her foreign degree to a bachelor's degree in human resources management awarded by an accredited institution of higher education in the United States.

⁴ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

⁵ It is noted that, in addition to describing the actual duties of the proffered position in probative detail, the petitioner also explains how the beneficiary will perform them within the context of its particular business operations.

(b)(6)

Page 7

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The director's decision dated March 13, 2013 is withdrawn. The petition is approved.