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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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U.S. Citizenship
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FILE: EAC 06 144 53281 Office: VERMONT SERVICE CENTER Date: JUN 04 2009

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: SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom,
Acting Chief, Administrative Appeals Office

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 human resources and security services consulting firm that seeks to employ the beneficiary as a human resources specialist. 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, the petitioner states that the proffered position qualifies as a specialty occupation and submits additional 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.

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 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such 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 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 human resources specialist. Evidence of the beneficiary’s duties includes: the Form I-129; the undated company support letter; and the petitioner’s response to the director’s request for evidence. The petitioner claims that the beneficiary’s proposed duties would be divided into four major categories: (1) investigative work; (2) client marketing and support; (3) internal policy management; and (4) internal personnel management. The petitioner provided supplementary evidence describing each area in more detail. As these documents are part of the record, their contents will not be restated herein. The petitioner stated that it is company policy for all of its employees in human resources positions to possess a bachelor’s degree from an accredited U.S. college or university. According to the petitioner, the beneficiary’s bachelor’s degree in international business and coursework in pursuit of a master’s in public administration more than satisfies the position’s requirements.

The director determined that the proffered position was not a specialty occupation. The director found that the record contained insufficient evidence to show that the degree requirement was an industry-wide standard among similar institutions. The director found that there was insufficient evidence to show that the petitioner would employ the beneficiary in a position with duties that are characteristic of those found in a specialty occupation or that the petitioner routinely hired employees with a degree in a specific field of study as entry into the human resources position.

On appeal, the petitioner contends that the proffered position is a specialty occupation, and submits two evaluations from two independent professionals in the field which evaluate the proffered position against industry standards. Based on these evaluations, which conclude that a bachelor's degree is the minimum requirement for entry into the proffered position and similar positions throughout the industry, the petitioner concludes that it has met its burden.

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 USCIS 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)).

In determining whether a position qualifies as a specialty occupation, USCIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

As previously mentioned, USCIS 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 *Handbook* discloses that a baccalaureate degree in a specific specialty is not required for a human resources, training, and labor relations specialist or manager. The *Handbook* reports:

The educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably, reflecting the diversity of duties and levels of responsibility. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, human resources administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

Based on the *Handbook's* information, employers do not require a bachelor's degree in a specific specialty for a human resources, training, or labor relations specialist or manager. Accordingly, the petitioner 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, human resources specialist.

The petitioner's contention that it requires a bachelor's degree from an accredited U.S college or university is not sufficient for purposes of this analysis. As stated above, the position of human resources manager proffered by the petition does not require a degree in a *specific specialty*; rather, it merely requires a bachelor's degree. The lack of a requirement of a degree in a specific specialty for this position, both by the petitioner and by the *Handbook*, indicate that the profession of human resource manager is not one that Congress contemplated when it created the H-1B visa category.

On appeal, the petitioner submits two evaluation letters in support of the contention that a specific degree requirement is common to the industry in parallel positions among similar organizations. However, the evaluations by [REDACTED] of Patroni Associates and [REDACTED] of Progressive Compensation, Inc. are not persuasive. While both evaluations conclude that the position of human resources specialist routinely requires a bachelor's degree for entry into such a position, neither letter indicates that a bachelor's degree in a specific specialty is required.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the record of proceeding contains eight job postings, one of which is the petitioner's posting for the proffered position. None of the seven postings from other companies represent companies that are similar in nature to the petitioner, a human resources and security services consulting firm. For example, the position proffered by Harley-Davidson is in the manufacturing and transportation industry. Likewise, the postings from LPL Financial Services, Smith Barney and World Savings are for positions in the financial services industry. The position advertised by Husky is in the manufacturing industry for plastics, and the position advertised by Convergence is in the technology industry. The postings, therefore, fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence in the record shows that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that the beneficiary's duties are performed by a human resources, training, or labor relations specialist or manager, occupations that do not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. While the AAO notes that the petitioner has submitted evidence of its hiring practices in the form of educational credentials for its other employees in the position of human resources specialist, the issue again is that no evidence exists to demonstrate that a degree in a *specific specialty* is normally required by the position.

Finally, there is no evidence in the record to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): 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. As previously discussed, the *Handbook* indicates that employers do not require a baccalaureate degree in a specific specialty for a human resources, training, and labor relations specialist or manager.

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.