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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

*Dr*

FILE: EAC 08 150 51914 Office: VERMONT SERVICE CENTER Date **AUG 05 2010**

IN RE: Petitioner:  
Beneficiary:

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:

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 \$585. 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  
Chief, Administrative Appeals Office

**DISCUSSION:** The director of the Vermont 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 design and development, IT consulting company. It seeks to employ the beneficiary as a technical recruiter and to classify her 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 concluding that the petitioner failed to establish that: (1) the proffered position is a specialty occupation, and; (2) the beneficiary is qualified to perform services in a specialty occupation.

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

The first issue before the AAO is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, 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 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 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, 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), 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.

In this matter, the petitioner seeks the beneficiary’s services as a technical recruiter. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s March 31, 2008 support letter; and the petitioner’s job description provided in response to the RFE. The support letter, together with the RFE response letter, indicates the proffered position would require the beneficiary to perform the following duties:

- Identify and interview applicants for positions in the IT profession to obtain information on work history, training, education and job skills (25%);
- Perform searches for qualified candidates according to relevant job criteria and required skill sets, using computer databases, networking, Internet recruiting resources, cold calls, media, recruiting firms and employee referrals (20%);
- Establish and maintain relationships with hiring managers (10%);
- Analyze IT employment market (10%);
- Contact applicants (10%);
- Prepare and maintain employment records (5%);
- Inform potential applicants about facilities, operations, benefits and job or career opportunities (5%);
- Arrange for interviews and provide travel arrangements (5%);

- Maintain current knowledge of and ensure company compliance with employment laws and guidelines (5%); and
- Advise managers and employees on staffing policies and procedures (5%).

The petitioner stated that it requires at least a bachelor's degree in business management, business administration, management information systems, computer science or a related field for the proffered position.

The petitioner submitted copies of the beneficiary's foreign diploma and transcripts. The educational evaluation submitted evaluates the beneficiary's foreign education as equivalent to a U.S. Master of Science in Computer Information Systems from an accredited institution of higher education in the United States.

The Labor Condition Application (LCA) was submitted for a technical recruiter to work in Jersey City, NJ at an hourly rate of \$16.90, which is also the prevailing wage listed. The petition states that the position is part-time for 20 hours per week.

On October 14, 2008, the director requested additional information from the petitioner. In part, the director requested the following: (1) documentation that the proffered position is a specialty occupation, including evidence that a bachelor's degree in a specific field of study is a standard minimum requirement for the proffered position, and; (2) evidence to establish that the beneficiary has at least a bachelor's degree in a field that is relevant to the proffered position.

In response to the RFE, counsel's brief appears to confuse the proffered position with that of a Computer Systems Analyst or related computer position. The petitioner fails to demonstrate the relevance of some of the documentation submitted by the petitioner in response to the RFE, including the Occupational Information Network *O\*Net On-line* Summary Reports for computer-related occupations, computer occupation-related sections from the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, and copies of advertisements for IT professionals.

However, in Exhibit 7 of the RFE response, counsel provided a list of the petitioner's employees, which indicates that the petitioner employs two HR Analysts/Technical Recruiters. The first has a bachelor's degree in human resources management while the second has a bachelor's degree in Math.

Additionally, counsel submitted the *O\*Net Online* Summary Report for personnel recruiters as well as advertisements from other employers for technical recruiters.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel asserts that the proffered position is a specialty occupation and submits a copy of the *Handbook's* section on Human Resources, Training, and Labor Relations Managers and Specialists. Additionally, counsel states that USCIS did not consider the advertisements and section from *O\*Net Online* that were submitted previously.

To make its determination whether the proffered position, as described in the initial petition and the petitioner's response to the RFE, qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO agrees with counsel's assertions on appeal that the proffered position of technical recruiter falls under the section on human resources, training, and labor relations managers and specialists as described in the *Handbook*, which describes recruitment specialists as follows:

Recruitment specialists maintain contacts within the community and may travel considerably, often to job fairs and college campuses, to search for promising job applicants. Recruiters screen, interview, and occasionally test applicants. They also may check references and extend job offers. These workers must be thoroughly familiar with their organization, the work that is done, and the human resources policies of their company in order to discuss wages, working conditions and advancement opportunities with prospective employees. They also must stay informed about equal employment opportunity (EEO) and affirmative action guidelines and laws, such as the Americans with Disabilities Act.

This description seems the most appropriate given that a large part of the beneficiary's duties is to search for and recruit applicants.

With respect to education and training requirements for human resources, training, and labor relations managers and specialists, the *Handbook* states:

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.

**Education and training.** Although a bachelor's degree is a typical path of entry into these occupations, many colleges and universities do not offer degree programs in personnel administration, human resources, or labor relations until the graduate degree level. However, many offer individual courses in these subjects at the undergraduate level in addition to concentrations in human resources administration or human resources

management, training and development, organizational development, and compensation and benefits.

Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business administration, and behavioral sciences is useful. Some jobs may require more technical or specialized backgrounds in engineering, science, finance, or law. Most prospective human resources specialists should take courses in principles of management, organizational structure, and industrial psychology; however, courses in accounting or finance are becoming increasingly important. Courses in labor law, collective bargaining, labor economics, and labor history also provide a valuable background for the prospective labor relations specialist. As in many other fields, knowledge of computers and information systems is useful. . . .

In other words, according to the *Handbook*, a bachelor's degree in a *specific specialty* is not required. This is supported by the petitioner's stated requirements that the proffered position requires a bachelor's degree in a range of fields as well as the evidence provided that, of the two individuals holding this position who are already employed by the petitioner, one has a degree in human resources management while the second has a degree in math.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered 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 alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 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.

As the *Handbook* indicates that a bachelor's degree in a wide range of fields is acceptable for employment as human resources, training, and labor relations managers and specialists, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a *specific specialty*.

As mentioned previously, counsel also argues that the proffered position falls under the Occupational Information Network *O\*Net On-line* Summary Report on Personnel Recruiters and therefore requires a minimum of a bachelor's degree. On July 7, 2010, the AAO accessed the pertinent section of the *O\*Net Online* Internet site, which addresses Personnel Recruiters under the Department of Labor's Standard Occupational Classification code of 13-1071.02. That site is <http://online.onetcenter.org/link/summary/13-1071.02>. Contrary to counsel's assertion, *O\*Net Online* does not state a requirement for a bachelor's degree for Personnel Recruiters. Rather, it assigns Personnel Recruiters a Job Zone Four rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the *O\*Net Online* does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *O\*Net Online* information is not probative of the proffered position being a specialty occupation.

Accordingly, the AAO finds that the petitioner has failed to establish its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

The petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The advertisements submitted in response to the RFE do not refute the *Handbook's* statement that degrees in a wide range of fields are acceptable: one advertisement requires a bachelor's degree in computer science or the equivalent; another advertisement requires only prior experience (stating that a bachelor's degree in MIS/computer science will also be considered); five advertisements require a bachelor's degree without specifying that the degree be in any particular field; and two more advertisements state that only a college degree is preferred, while yet another advertisement states only that a bachelor's in computer science is "a plus." Therefore, the advertisements do not establish that at least a bachelor's degree or equivalent in a *specific specialty* is an industry norm. As a result, the petitioner has not established a degree requirement in parallel positions.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than technical recruiter positions that can be performed by persons without a specialty degree or its equivalent.

As stated previously, regarding the other two people employed by the petitioner as technical recruiters, one has a bachelor's degree in human resources management while the second has a bachelor's degree in math. Because the petitioner did not distinguish between the position offered to the beneficiary and those held by these two employees, the AAO assumes that the positions held by these two individuals are similar to the one proffered to the beneficiary, who holds the U.S. equivalent of a master's degree in computer information systems. Therefore, although these individuals may hold at least a bachelor's degree, because the fields of math, human resources management, and computer science do not appear to be related and as the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a *specific specialty*, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree or its equivalent in a specific specialty. The AAO does not find that sufficient evidence was provided to demonstrate that the proffered duties, as described by the petitioner in its initial support letter, reflect a higher degree of knowledge and skill than would normally be required of technical recruiters performing the vague and generic duties described by the petitioner. The AAO, therefore, concludes that the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO next turns to the director's second basis for denial, in which she determined that the record is insufficient for USCIS to establish that the beneficiary is qualified to perform the duties of the claimed specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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), an alien must meet one of the following criteria to qualify to perform services in a specialty occupation:

- (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 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree 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 (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.

The AAO finds that the credential evaluation submitted, which finds that the beneficiary's education is equivalent to a master of science degree in computer information systems from an accredited institution of higher education in the United States, together with the supporting documentation is sufficient to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation requiring at least a bachelor's degree or equivalent in a computer-related field. Nevertheless, 8 C.F.R. § 214.2(h)(4)(iii)(C) specifically and repeatedly states that the beneficiary must possess one of the listed qualifications required by or related to "the specialty," not "a specialty." As the proffered position has not been demonstrated as being a specialty occupation, it is simply not possible for the petitioner to establish that the beneficiary qualifies to perform the services of that claimed specialty occupation. As such, this basis for denying the petition is hereby affirmed.

The appeal will be dismissed and the petition denied. 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. Here, that burden has not been met.

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