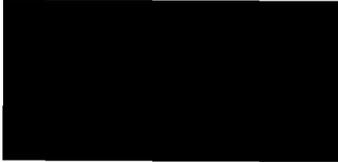


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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



D2

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,

*Michael T. Kelly*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director 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.

On the Form I-129 visa petition the petitioner stated that it is a security and surveillance (CCTV) manufacturing firm. To employ the beneficiary in what it designates a project manager position, the petitioner endeavors 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, finding that the petitioner failed to establish that the petitioner would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the petitioner had satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief.

The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which (1) 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 (2) 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 a particular position 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.

Evidence in the record shows that the beneficiary has a master's degree in Communication awarded by Michigan State University. With the Form I-129 visa petition, counsel submitted a letter, dated April 8, 2009, from the petitioner's finance manager. That letter includes the following discussion regarding the duties that would be performed if the instant visa petition were approved:

[The beneficiary] will collaborate with and direct sales and marketing executives, as well as members of the R & D department in Taipei to ensure program goals are understood and achieved, surveillance software (especially wireless) technical solutions satisfy customer requirements and software product development adhere to and comply with U.S. Quality Certification (DE; FCC; Roche; UVL, and etc. [sic]) processes and standards. [The beneficiary] will also be asked to cooperate with software developing houses throughout the U.S. for various surveillance or CCTV solutions and will act as chief liaison between U.S. software developers and our parent company's R & D department's project leaders in Taipei, in order to ensure optimal product solution for each project. In addition, she will plan and participate in the product launching schedule and will be regularly communicating with [REDACTED] U.S. clients to ensure the project meets all requirements for the U.S. market, i.e. each client company's marketing department's specific requirements. What's more, [the beneficiary] will also be entrusted with the responsibility of leading a special Original Design Manufacture (ODM) and Original Engineering Manufacture (OEM) team, which requires both a sales and technical background.

The petitioner's finance manager further stated:

[The beneficiary] will be in charge of the complete project management process, involving all steps, from customer quotation request (RFQ) to mass production (MP). Last, but not least, in her capacity of chief-liaison ("bridge") between customer and the R & D department, [the beneficiary] will be supporting the production improvement activities as well as the products' regularly scheduled or requested firmware upgrades. Last, but not least, [the beneficiary] will also be entrusted with keeping abreast of the U.S. market's latest products requirements or trends, both in the CCTV industry and market, as well as among our competitors worldwide and will advise our management team on both necessary and competitive product improvements and/or upgrades.

As to the education required for the proffered position, the petitioner's finance manager stated:

The position requires the candidate to hold a minimum of a Bachelor's Degree or its foreign equivalent in either Communication or Business. This degree requirement is standard in our industry for a Project Manager and has been a standard requirement in our company since its founding in 1980.

The petitioner's finance manager offered no evidence in support of either assertion.

The petitioner's finance manager continued, "Only someone with a Bachelor's degree in either Communication or Business will have the practical knowledge of being able to use logical analysis and critical thinking," and stated:

All the essential skills necessary to effectively perform the job duties of Project Manager with our company, such as adequate cross-functional communication skills, confidence and expertise in managing diverse business projects, leadership abilities to improve or develop working processes, risk management, schedule control, as well as the critical ability to make important business decision and/or recommendations, negotiation and technology skills, just to name a few, all of which are essential to the performance of the Project Manager, IT CCTV Solution Dept. position at [REDACTED] can only be gained in the above –specified majors . . . .

Because the evidence provided did not credibly demonstrate that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, the service center, on April 18, 2009, issued a request for evidence in this matter. The service center requested, *inter alia*, that the petitioner "explain why the work to be performed requires the services of a person who has a college degree or its equivalent in the occupational field."

In response, counsel reiterated the petitioner's finance manager's uncorroborated assertion that the requirement is standard in the industry, but without providing any corroborating evidence on that point. Counsel also reiterated that the petitioner had never hired a project manager without such a degree, but without providing any corroborative evidence. Finally, counsel reiterated the petitioner's finance manager's assertion that the various duties of the proffered position can be adequately acquitted only by a person with a bachelor's degree in either communication or business, but without offering any corroborating evidence on that point.

Although the statements by the petitioner's finance manager are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)). Counsel's statement reiterating the petitioner's finance manager's claims, on the other hand, are not evidence and are accorded no evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

In the decision of denial, the director found that the petitioner had not established that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. On appeal, counsel asserted that the petitioner had so established.

As they are not self-evidently true, the petitioner's unsupported assertions that, for instance, "the practical knowledge of being able to use logical analysis and critical thinking" can only be obtained by graduating with a minimum of a bachelor's degree or the equivalent in communications or business have no probative value.

The petitioner is obliged to demonstrate that the proffered position requires a minimum of a bachelor's degree or the equivalent **in a specific specialty**. The petitioner has asserted that the proffered position requires a bachelor's degree in communication or business. "Communication or business" is not a specific specialty. The petitioner has not even alleged, let alone demonstrated, that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The position cannot qualify as a specialty occupation because, as even the petitioner's finance manager and counsel have admitted, it can be performed by a person with a bachelor's degree in **either** communications **or** business.

A petitioner must demonstrate that the 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 corollary between the required specialized studies and the position, the requirement of a degree in two very different specialties, such as communications and business, does not establish eligibility. The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. *Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988).

The AAO recognizes the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations.<sup>1</sup> On appeal, counsel asserted that the proffered position in the instant case closely corresponds to Industrial Project Manager positions. As to the educational requirements of such positions, the *Handbook* states:

Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. However, although employers may prefer candidates with a business or engineering background, some companies will hire well-rounded graduates from other fields who are willing to spend time in a production-related job, because experience in some aspect of production operations is needed before one advances to upper management positions.

Some industrial production managers enter the occupation after working their way up through the ranks, starting as production workers and then advancing to supervisory positions before being selected for management. These workers already have an intimate knowledge of the production process and the firm's organization. To

---

<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online, accessed November 1, 2010.

increase one's chances of promotion, workers can expand their skills by obtaining a college degree, demonstrating leadership qualities, or taking company-sponsored courses to learn the additional skills needed in management positions.

That many industrial project managers have bachelor's degrees does not demonstrate that a bachelor's degree is the minimum educational requirement for entry into such a position. That passage explicitly states that some industrial project managers rise through the ranks, and are promoted to such a position without a degree. Further, that passage indicates that, even for those positions that require a bachelor's degree, a degree in business administration, management, industrial technology, or industrial engineering may suffice. Business administration, management, industrial technology, and industrial engineering do not comprise a specific specialty.

Neither the *Handbook* nor any other evidence in the record demonstrates that industrial project manager positions, which counsel suggests the proffered position in the instant case is, require a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not demonstrated that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner submitted no evidence pertinent to the hiring practices of similarly-sized companies in closed circuit television manufacturing or similar industries. The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar companies, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner has not demonstrated that the proffered position or its duties are so complex, unique, or specialized that they can only be performed by a person with a minimum of a bachelor's degree in a specific specialty or the equivalent or that performance of the duties is usually associated with a minimum of a bachelor's degree in a specific specialty or the equivalent. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) or the criteria of the second clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the director's decision to deny the petition shall not be disturbed. The appeal will be dismissed and

[REDACTED]  
Page 8

the petition denied based on the petitioner's failure to demonstrate, or even allege, that the proffered position qualifies as a specialty occupation pursuant to section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. The appeal will be dismissed and the petition denied.

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