

**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



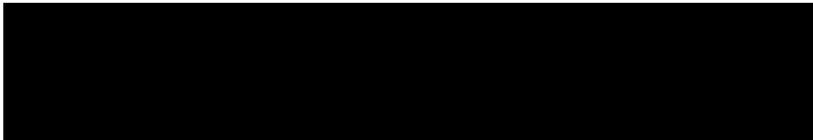
FILE: WAC 08 150 52915 Office: CALIFORNIA SERVICE CENTER Date: **JAN 06 2010**

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:

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, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The 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.

The petitioner is an international freight forwarding company that seeks to employ the beneficiary as a logistics 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 on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the 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) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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.

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 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 proposed position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, 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 its March 20, 2008 letter of support, the petitioner stated that the duties of the proposed position would include analyzing, developing, and implementing logistics plans for the petitioner's international freight forwarding activities, including inbound and outbound freight shipments of perishable and non-perishable shipments. According to the petitioner, she would perform the following tasks:

- Planning and directing the flow of air, ocean, and surface traffic moving to overseas destinations;
- Negotiating with foreign shipping interests to contract for reciprocal freight handling agreements;
- Interacting with customers to facilitate the logistics process;
- Conducting distribution and network studies;
- Monitoring inventory;
- Analyzing requirements in order to develop strategies to achieve the desired delivery time and meet deadlines; and
- Preparing reports for management.

In determining whether a proposed position qualifies as a specialty occupation, USCIS looks beyond the title of the position. It 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 minimum of a baccalaureate degree in a specific specialty for entry into the occupation, as required by the Act. The AAO routinely consults the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. In its adjudication of this appeal, the AAO consulted the 2010-2011 edition of the *Handbook*.

In reaching its conclusion regarding the degree requirements of the proposed position, the AAO has compared the position's duties against those described for a range of professions. This review has found that virtually all of the proposed position's duties are listed among the occupations of production, planning, and expediting clerks and cargo and freight agents.

In pertinent part, the *Handbook* states the following regarding the duties of production, planning, and expediting clerks:

Expediting clerks contact vendors and shippers to ensure that merchandise, supplies, and equipment are forwarded on the specified shipping dates.¹

With regard to the duties of cargo and freight agents, the *Handbook* states the following:

¹ *Occupational Outlook Handbook*, 2010-2011 ed., available at <http://www.bls.gov/oco/ocos283.htm> (accessed December 17, 2009).

Cargo and freight agents help transportation companies manage incoming and outgoing shipments in airline, train, or trucking terminals or on shipping docks. Agents expedite shipments by determining a route, preparing all necessary documents, and arranging for the pickup of freight or cargo and its delivery to loading platforms. They may also keep records of the cargo, including its amount, type, weight, dimensions, destination, and time of shipment. They also keep a tally of missing items and record the condition of damaged items. . . .

They also determine any shipping rates and other applicable charges. For imported or exported freight, they verify that the proper customs paperwork is in order. Cargo and freight agents often track shipments electronically, using bar codes, and answer customers' questions about the status of their shipments.²

Based upon its reading of the *Handbook*, the AAO concludes that the proposed position, as described by the petitioner in its letter of support and in response to the director's request for additional evidence, combines the duties of production, planning, and expediting clerks and cargo and freight agents, as such positions are described in the *Handbook*.

Having concluded that the duties of the proposed position combine those of production, planning, and expediting clerks and cargo and freight agents, the AAO next turns to the *Handbook* to determine whether these occupations normally require applicants for employment to have the minimum of a baccalaureate or higher degree, or its equivalent. The *Handbook* states the following regarding the educational requirements for production, planning, and expediting clerks:

Many production, planning, and expediting jobs are at the entry level and do not require more than a high school diploma. These clerks usually learn the job by doing routine tasks under close supervision. Computer skills are very important.³

With regard to the educational requirements of cargo and freight agents, the *Handbook* states the following:

Cargo and freight agents need no more than a high school diploma and learn their duties informally on the job.⁴

In that the *Handbook* finds no baccalaureate or higher degree, or its equivalent, to be required for employment in any of the occupations whose duties comprise the proposed position, the AAO concludes that the position does not qualify as a specialty occupation on the basis of a degree requirement under the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

² *Id.* at <http://www.bls.gov/oco/ocos281.htm> (accessed December 17, 2009).

³ *Id.* at <http://www.bls.gov/oco/ocos283.htm> (accessed December 17, 2009).

⁴ *Id.* at <http://www.bls.gov/oco/ocos281.htm> (accessed December 17, 2009).

Beyond the findings of the *Handbook*, the AAO finds an additional reason why the proposed position does not qualify as a specialty occupation under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). In an addendum to its August 27, 2008 letter, the petitioner indicated that it employs seven individuals in positions similar to the one proposed in this petition. According to the petitioner, one of those individuals possesses a bachelor's degree in economics, one possesses a bachelor's degree in management, one possesses a bachelor's degree in international studies, one possesses a bachelor's degree in English, one possesses a bachelor's degree in Asian studies, one possesses a bachelor's degree in business administration, and one possesses a bachelor's degree in social science.

Thus, although the petitioner claims to require a degree for the proposed position, it does not appear as though it requires that the degree be in any particular field of study. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of 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. Again, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, 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 189, 2007 WL 1228792 (C.A. 1 (Puerto Rico) 2007).

For all of these reasons, the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(ii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a demonstration that a specific degree requirement is common to the industry in parallel positions among similar organizations. To meet the burden of proof under this prong imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations. 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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As noted previously, the *Handbook* does not report that the industry normally requires a bachelor's degree in a specific field as a minimum qualification. Nor has the petitioner submitted evidence that the industry's professional associations have made a degree a minimum requirement for entry.

In order to determine whether the degree requirement is common to the industry in parallel positions among similar organizations, the AAO has reviewed the three job vacancy announcements contained in the record, and finds them unpersuasive.

The first evidentiary deficiency with these job vacancy announcements is that none of them indicate that a baccalaureate degree in a specific field, or its equivalent, is a normal minimum entry requirement. Rather, they indicate that a degree in any field of study would suffice. Again, 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 proposed position. Moreover, when a range of degrees, or a degree of generalized title without further specification, can perform a job, the position does not qualify for classification as a specialty occupation.

The second evidentiary deficiency with these job vacancy announcements is that the petitioner has not submitted any evidence to demonstrate that any of these job postings are from companies "similar" to the petitioner, an international freight forwarding company. Systems Services America is involved in the business of foodservice distribution, and Lexmark develops and manufactures printing solutions. The industry in which Agrium operates is unclear. Nor is there any evidence that the advertisers are similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. None of the announcements indicate the size of the particular employer. As they are limited to sparse, generalized, and generic information about the nature of the duties of their positions, these advertisements do not provide a factual basis for a meaningful comparison with the duties proposed for the beneficiary. Also, there is no evidence in the record as to how representative these advertisements are of the advertisers' usual recruiting and hiring practices. Simply 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)).

For all of these reasons, the petitioner has failed to establish that a degree requirement is an industry standard, and therefore has not satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The *Handbook* reveals that the duties of the proposed position are similar to those of production, planning, and expediting clerks and cargo and freight agents as outlined in the *Handbook*; and the *Handbook* does not indicate that a baccalaureate degree in a specific field, or its equivalent, is a normal minimum entry requirement. The duties proposed by the petitioner are no more complex or unique than those outlined by the *Handbook*; rather the duties proposed by the petitioner largely mirror those outlined in the *Handbook*. The duties discussed by the petitioner appear no more unique, complex, or specialized than those discussed in the *Handbook* which, as discussed previously, neither require nor are associated with at least a baccalaureate degree in a specific specialty. The record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations similar to the petitioner. Moreover, the AAO notes, again, that the petitioner's own testimony indicates it does not require a degree in a specific field of study for the position.

The petitioner, therefore, has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it 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 the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

As was indicated previously, in response to the director's request for additional evidence, the petitioner submitted information regarding the qualifications of seven individuals who hold positions similar to the one proposed for the beneficiary. As noted, one of those individuals possesses a bachelor's degree in economics, one possesses a bachelor's degree in management, one possesses a bachelor's degree in international studies, one possesses a bachelor's degree in English, one possesses a bachelor's degree in Asian studies, one possesses a bachelor's degree in business administration, and one possesses a bachelor's degree in social science.

The record of proceeding fails to establish eligibility under the third criterion for two reasons. First, the petitioner has submitted no documentary evidence that any of these individuals in fact possess the claimed degrees, or that any of them have ever in fact worked for the petitioner. Again, simply 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)).

Second, even if the AAO were to accept the petitioner's unsupported assertions, the record would still not establish eligibility under this criterion, as those assertions indicate that the petitioner does not require that its employees possess degrees in any particular field of study.

Rather, it appears as though any degree would suffice. Again, 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 proposed position. Moreover, when a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of 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. The proposed position, therefore, does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed 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 in the specialty. The evidence presented by the petitioner does not establish that the duties of the proposed position are any more specialized or complex than those normally performed by production, planning, and expediting clerks and cargo and freight agents in the industry who are not required to possess a baccalaureate-level education in a specific field of study. The duties proposed for the beneficiary are routinely performed in the industry by individuals who do not have a baccalaureate-level education in specific field of study. The record fails to establish that the proposed position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Nor does the August 11, 2008 evaluation from [REDACTED] aid the petitioner in classifying its proposed position as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). First, [REDACTED] does not note the petitioner’s location or indicate whether he visited the petitioner’s place of business or interviewed anyone associated with the petitioner. Nor does he analyze the duties of the proposed position in any meaningful way, other than to simply repeat the duties set forth in the petition. Accordingly, the AAO finds that the petitioner has established an insufficient factual foundation to support [REDACTED] assertions. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and this petition was properly denied. Accordingly, the AAO will 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.