

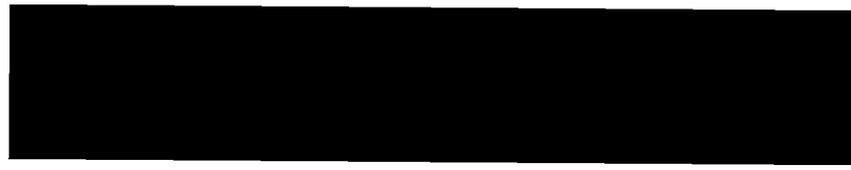
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



B2

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 30 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.

Thank you,

  
for  
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 sustained. The petition will be approved.

The petitioner is a major commercial bank, which, at the petition's filing, employed more than 50,000 people, earned a gross annual income of 13.6 billion dollars, and held assets of 219 billion dollars. To employ the beneficiary as a credit analyst, the petitioner filed this H-1B petition 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 he determined that the beneficiary's Master of Science (MS) degree in Biostatistics from the University of Minnesota did not qualify him to perform the services of the claimed specialty occupation, which the director determined to be that of a loan underwriter, rather than a credit analyst.

According to the Form I-129, the beneficiary would fill a credit analyst position at the St. Paul, Minnesota office where the beneficiary performed Optional Practical Training. The AAO concurs with counsel's contention on appeal that the record of proceeding before the director when she issued her decision to deny the petition established that the beneficiary would be employed as a credit analyst, as claimed in the Form I-129 and the allied documents submitted by the petitioner with the Form I-129 and in its response to the service center's request for additional evidence. Accordingly, the AAO bases its decision on its independent analysis of this petition as seeking the beneficiary's H-1B classification for a credit analyst position as described in the petition.

Section 214(i)(1) of 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), 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, 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.

As reflected in the entry on the credit analysts occupation in the Department of Labor’s 2010-2011 *Occupational Outlook Handbook*, credit analysts do not constitute an occupational category that

normally requires at least a bachelor's degree, or the equivalent, in a specific specialty.<sup>1</sup> Therefore, it was incumbent on the petitioner to provide sufficient evidence to establish that, in addition to the statutory and regulatory definition of "specialty occupation," its particular credit analyst position satisfies at least one criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Based upon its review of the totality of the evidence in this particular record of proceeding, the AAO finds that the petitioner has established that the specific duties of the proffered position routinely involve highly specialized and complex applications of statistics at a level requiring a knowledge of statistics and associated methods of mathematical analyses that is usually associated with at least a bachelor's degree or its equivalent in statistics. Therefore, the petitioner has established the proffered position as a specialty occupation, by satisfying the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Further, by virtue of the academic records submitted by the petitioner and the expert affidavit presented on appeal regarding the beneficiary's MS degree in Biostatistics, the AAO finds that the beneficiary is qualified to fully perform in the pertinent specialty occupation in accordance with the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1), that is, as one who "[h]olds a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university."

For the reasons discussed above, the appeal will be sustained, and the petition will be approved.

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 been met.

**ORDER:** The appeal is sustained. The petition is approved.

---

<sup>1</sup> The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The 2010-2011 *Handbook's* entire entry on credit analysts reads as follows:

**Credit analysts  
(O\*NET 13-2041.00)**

Analyze current credit data and financial statements of individuals or firms to determine the degree of risk involved in extending credit or lending money. Prepare reports with this credit information for use in decision-making.

2008 employment: 73,200

Projected 2008-18 employment change: Faster than average

Most significant source of postsecondary education or training: Bachelor's degree