

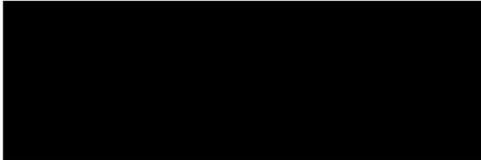
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Office of Administrative Appeals MS 2090
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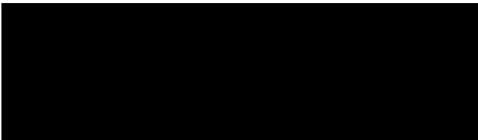


FILE:  Office: VERMONT SERVICE CENTER Date: **JUN 01 2010**

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 acting 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.

The petitioner is a travel agency. To employ the beneficiary in a position designated as a general manager, 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 acting 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 acting director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. With the appeal, counsel submitted a brief and additional evidence.

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 acting director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits 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 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.

To determine whether a particular job qualifies as a specialty occupation position, the AAO does not solely rely on the job title or the extent to which the petitioner's descriptions of the position and its underlying duties correspond to occupational descriptions in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). Critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform for the entity or entities ultimately determining the work's content.

With the petition the petitioner provided no evidence to demonstrate that the duties of the proffered position qualify it as a specialty occupation. Therefore, on July 14, 2008 the service center issued a request for evidence in this matter, noting, *inter alia*, that the evidence did not demonstrate that the proffered position is in a specialty occupation, and asking for additional evidence on that point.

In response, the petitioner provided a letter from [REDACTED] who is the petitioner's president, and a statement of the duties of the proffered position. [REDACTED] stated that the position requires a bachelor's degree from an accredited college, but did not state that the degree required must be in any specific specialty.

The petitioner provided a letter from the president of another travel agency that states that anyone considered for a management position with that company is required to have a bachelor's degree. That letter does not state, however, that the degree must be in any specific specialty. An employment verification and recommendation letter in the record shows that the beneficiary was previously employed by that other travel agency.

The petitioner also provided a printout of web content of an on-line employment site. That content is an announcement of a position for a "Sales/Business Development Manager (Tourism/Travel)" placed by MLT Vacations. The announcement states that candidates for the position must have a "bachelor's degree from a four-year college or university; or equivalent work experience, or equivalent combination of education and experience." The announcement does not state that a degree in any specific specialty, or the equivalent, is required.

The petitioner provided a letter from the sales manager of a tour operator, who stated, "In most cases the majority of managers need to hold a bachelors degree as a requirement for the job." [Errors in the original.] That letter does not state that the degree must be in a specific specialty.

The petitioner provided a letter from a college professor who stated:

[F]or any study abroad program to be successful, a working relationship with an intelligent, articulate tour operator or travel agent is mandatory. He or she must, preferably be a person who is multilingual or with considerable travel experience and

knowledge of foreign cultures and background obtained either through formal or informal study but, even more importantly, through the experience of living in a different milieu.

The professor continued that a bachelor's degree, and preferably an MBA, is a basic requirement for an agent booking travel courses worthy of academic credit. The professor did not state that the required bachelor's degree must be in any specific specialty, rather than for the sake of general education, and the preceding paragraph suggests that the degree requirement is, in fact, for the sake of general education.

On October 2, 2008 the acting director denied the petition, finding that the petitioner had not demonstrated that the proffered position is in a specialty occupation.

On appeal, counsel submitted another letter from [REDACTED] who stated that the nature of the duties he must delegate to his general manager, especially in his absence, requires a bachelor's degree. [REDACTED] did not state that the degree must be in any specific specialty. In another letter submitted on appeal, the petitioner's president stated that he requires "a professional manager with a bachelor's degree specialized in the field of travel."

Counsel also submitted a letter from another professor who stated that she had taught art classes for credit on voyages, and that "... preparation of these trips must be done through someone with higher education in order to have them understand the complex requirements of our academic programs." She further stated that the planning of those trips "was always made with someone at management level - a person with a minimum of a bachelor's degree." Later in that same letter, however, she stated that she had, in fact, planned such a voyage with a person of lesser education and it had been "considerable [sic] less successful."

She did not explain in what way her experience with a less educated travel agent had been less successful, or in what way a bachelor's degree would have improved her experience. She did not state how she knew the educational level of the travel agency employees with whom she had worked. She did not state what the complex requirements of her institution are that render a bachelor's degree a necessity for planning the voyages, or why those requirements cannot be explained to a person with less than a bachelor's degree. She stated, "The first hand knowledge of academic requirements and procedures is essential" She did not state why such knowledge is essential to planning a voyage.

Yet further, the AAO notes that the proffered position is not for a travel agent, but for a general manager, and that the duties of the proffered position, as stated by the petitioner's president in a job description provided to support the instant petition, do not include planning trips.

With the appeal, counsel provided vacancy announcements from Carnival Cruise Lines for a "Manager, Revenue Planning" and a "Manager Online Lead Generation." The revenue planning manager announcement states that the position requires a minimum of "A Bachelor's degree (BS or

BBA), preferably in Finance” The announcement for an online lead generation manager states that the job requires a minimum of a bachelor’s degree in marketing or a related field.

Counsel provided announcements from Expedia, Inc. for a senior global product manager and a general manager and local expert for its Hawaii office. The senior global product manager announcement states that the position requires a master’s in business administration. The general manager/local expert position requires a bachelor’s degree, but does not state that it must be in any specific specialty.

Another announcement is from Mark Travel Corporation and states that the company is seeking a destination resource manager with a minimum of a bachelor’s degree. It does not state that the degree must be in any specific specialty. One announcement was placed by “New Light.” It states that New Light is in a travel, transportation, and tourism business and is looking for a “Marketing/Segment Manager,” which position requires a college degree in marketing or a business-related field.

An announcement from an unidentified Jersey City software company’s travel and hospitality business group states that it is seeking a Travel and Hospitality Marketing and Presales Manager and that the position requires a minimum of a bachelor’s degree, but does not state that it requires a degree in any specific specialty. An announcement from a hotel/hospitality company named Partner Services states that it is seeking a market manager and that a college degree or equivalent experience is required, but does not list any specific specialty.

An announcement submitted shows that [REDACTED] a Nevada company that arranges engineering, architecture, construction, maintenance, and security for their clients, among other services, was seeking a corporate travel manager, and that the position requires a bachelor’s degree. That announcement does not indicate that the degree must be in any specific specialty.

Counsel provided two evaluations of the proffered position performed by [REDACTED] a [REDACTED] at Metropolitan College’s Management School, and [REDACTED] full-time [REDACTED] at South University in West Palm Beach, Florida. Both evaluators listed various managerial duties involved in the proffered position and the requisite knowledge and skills and stated. [REDACTED] stated, in summation, “For all these reasons, it would, in my opinion, be impossible for a potential manager to perform the functions of this job without a Bachelor’s degree.” [REDACTED] did not, however, indicate that the degree must be in any specific specialty.

[REDACTED] similarly, stated, “It is my conclusion . . . that the position of General Manager at Celestial Voyagers, Inc. would require a Bachelor’s degree to adequately perform the complex duties required for the position.” [REDACTED] did not, however, state that the proffered position requires a degree in any specific specialty.

On appeal, counsel stated that the acting director failed to consider the complexity of the described duties in reaching his decision to deny the petition, and that the letters from [REDACTED] and

█ should be accorded more weight. Counsel also stated that the acting director had failed to consider some portions of the evidence.

As was noted above, section 214(i)(1) of the Act requires that, for a position to be considered a position in a specialty occupation, it must require attainment of a bachelor's or higher degree in a **specific specialty**, or its equivalent.

As was also noted, the petitioner must, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), demonstrate that the proffered position requires a bachelor's degree in a specific specialty, and is therefore a position in a specialty occupation, by one of the following four methods. It must show (1) that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position; (2) that 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) that the employer normally requires a degree or its equivalent for the position; or (4) that 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.

The AAO will first consider whether a bachelor's degree is normally required for such a position. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The listed occupations in the *Handbook* whose duties correspond most closely to the duties of the proffered position are Office and Administrative Support Worker Supervisors and Managers and Administrative Services Managers. The *Handbook* makes clear that entry into those fields does not require a college degree. The *Handbook* does not support the assertion that the proffered position normally requires a bachelor's degree or its equivalent in a specific specialty, and the AAO notes that the petitioner and counsel did not cite the *Handbook* for support. See 8 C.F.R. §214.2(h)(4)(iii)(A)(1).

The vacancy announcements in the record were apparently submitted to support the proposition that a degree requirement in a specific specialty is common to the industry among similar organizations. The majority of those vacancy announcements, however, do not state that a candidate must have a bachelor's degree in a specific specialty. As such, they do not support the assertion that a degree requirement in a specific specialty is common to the industry. In fact, because so many of the announcements do not require a degree in a specific specialty, they suggest the opposite of what the petitioner is attempting to establish, *i.e.*, that such a requirement for a degree in a specific specialty does not normally exist.

Of the remaining vacancy announcements, one of the positions announced by Carnival Cruise Lines requires a degree, preferably in finance, and the other requires a degree in marketing or a related field. Expedia requires that its general manager and local expert in Hawaii have an MBA. New Light requires that its marketing/segment manager have a degree in marketing or a business-related field.

The petitioner's president stated that the proffered position requires a bachelor's degree "specialized in the field of travel." None of the vacancy announcements support the proposition that requiring a degree in the field of travel is common to the industry in parallel positions among similar organizations. See 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). As such, none of the submitted vacancy announcements lends support to the instant petition.

The letters and evaluations, similarly, although unanimous that the proffered position requires a bachelor's degree, did not state the field in which that degree should be. They appeared to assert that the incumbent in such a position should have a bachelor's degree merely because they would likely be a better quality employee, with a greater base of knowledge in general, rather than in a specific specialty.

However, requiring a bachelor's degree is insufficient, in itself, to establish that a position qualifies as a specialty occupation. 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. 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, does not establish eligibility. *Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988).

With regard to the criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3), it appears that the proffered position is a newly created position, and the petitioner has not provided evidence that it has previously employed someone in this position with a bachelor's degree or its equivalent in a specific specialty. Looking to the petitioner's "Notice of New Position," as indicated above, the petitioner's own notice does not state that a bachelor's degree or its equivalent in a specific specialty is a minimum entry requirement for the proposed position. As the record has not established a prior history of hiring to the proffered position only persons with at least a bachelor's degree or its equivalent in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the proffered position and its duties, as described by the petitioner's president, appear to be the ordinary duties of office support workers and managers or administrative service managers. They do not appear to be so complex, specialized, or unique that knowledge required is usually associated a bachelor's degree. See 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (4).

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

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.