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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

[Redacted]

D2

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUN 01 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 \$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.


for
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 stated on the Form I-129 visa petition that it is a management and logistics consulting firm. To employ the beneficiary in a position designated as a management consultant, 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 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 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 (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*).¹ 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.

The four additional criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), one of which the proffered position must meet in order to qualify as a specialty occupation, are listed above. In the instant case, there is no indication that the petitioner has ever previously employed anyone in the proffered position.² Therefore, petitioner cannot claim that it normally requires a degree or its equivalent for the position.

The petitioner, a management and logistics consulting firm, has one single employee, its founder, and proposes to employ the beneficiary. On the Form I-129 visa petition, the petitioner stated that it has gross annual income of \$50,000. The record contains no evidence that a degree requirement is common to the industry in parallel positions among similar organizations.

The duties of the proffered position, as described in a March 26, 2008 letter from the petitioner's founder, are:

1. Provide international trade advice to import/export companies specializing in trade between South Asia and the United States
2. Analyze business operations and provide recommendations in improving efficiency for import/export operations
3. Develop systems to streamline business operations
4. Provide advice regarding methods and procedures necessary to reduce operating costs

¹ 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 April 19, 2010.

² The petitioning corporation was established on January 29, 2008 and filed the instant petition on April 1, 2008. Other than its founder, it had no employees during the interim.

5. Develop and implement information control systems designed to organize and maintain inventory management data
6. Analyze work problems and procedures such as communications, information flow, inventory control, and cost analysis and recommend changes
7. Design and implement international trade information systems to coordinate inventory records and related sales and purchasing data
8. Integrate and streamline administrative record keeping functions based upon improved information system controls

An argument might be made that those duties are sufficiently complex to require a bachelor's degree or the equivalent. Only the first of the eight enumerated duties, however, is even peripherally related to political science, the subject in which the beneficiary received her degree. To answer that obvious objection, the petitioner provided evaluations from college professors

evaluation lists the duties of the proffered position and states that the position ". . . requires the theoretical and practical application of an advanced highly specialized body of knowledge in the field of Political Science" As was noted above, only one of the listed duties is remotely related to political science. The professor's assertion to the contrary is simply not credible.

further stated,

The skills required to provide international trade advice, improve efficiency for import/export operations, develop a system to streamline business operations, design and implement an international trade information systems, and analyze work problems and procedures, are often taught in courses of Political Science

stated,

The skills required to provide international trade advice to import/export companies, analyze business operations, develop systems to streamline business operations, design and implement an international trade information system, integrate administrative records, and implement an informational control system, are often taught in courses of Political Science

Neither of these claims, however, is supported by corroborating evidence indicating that the necessary skills to perform the duties of a management consultant, as described, are normally obtained through Political Science coursework and that such a degree, or its equivalent, is normally required to perform the duties of this position. Moreover, although indicates that a "practical application" of political science knowledge is also required, there is no indication that the listed coursework would provide "practical application" skills as opposed to only theoretical knowledge.

Most importantly and as discussed in greater detail below, however, the broad and unsupported assertions of both [REDACTED] are insufficient to overcome the statistically based conclusions of the *Handbook*. As such, the evaluations do not make a credible case for the proposition that the duties of the proffered position, as stated, require a degree in political science. The AAO may, in its discretion, use as advisory opinions 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)

In response to a request for evidence, counsel provided a copy of a portion of the *Handbook* that relates to management analysts and management consultants and asserted that the proffered position qualifies as such a position. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations.

As to the educational requirements of management analyst positions, the *Handbook* states,

Educational requirements for entry-level jobs in this field vary between private industry and government. Many employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field or industry in which the worker plans to consult. Other firms hire workers with a bachelor's degree as research analysts or associates and promote them to consultants after several years. Some government agencies require experience, graduate education, or both, but many also hire people with a bachelor's degree and little work experience for entry-level management analyst positions.

Few universities or colleges offer formal programs in management consulting; however, many fields of study provide a suitable educational background for this occupation because of the wide range of areas addressed by management analysts. Common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, or engineering. Most analysts also have years of experience in management, human resources, information technology, or other specialties. Analysts also routinely attend conferences to keep abreast of current developments in their field.

That passage makes no mention of a degree in political science. It does not indicate that a bachelor's or higher degree in any specific specialty is required, but, rather, that a degree in a wide range of areas may suffice.

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 any one of a wide range of disciplines, 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, does not establish eligibility. *Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988). The portion of the *Handbook* cited makes clear that a bachelor's degree in a specific specialty is not normally the minimum requirement for entry into the particular position and that employers do not commonly require such a degree. See 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

In addition, as no evidence was submitted of industry requirements for parallel positions among similar organizations, the petitioner has failed to meet the requirements of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has never previously employed anyone in the proffered position. The petitioner is unable, therefore, to show that it normally requires a bachelor's degree or its equivalent as a prerequisite for the proffered position. See 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The remaining methods of showing that a proffered position is or will be in a specialty occupation are to show that (a) the particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty or (b) 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 in a specific specialty. To pursue this avenue counsel provided the evaluations from professors [REDACTED] which are discussed above. As was previously discussed, the AAO does not find those evaluations questionable, and they do not, therefore, show that the petitioner demonstrated that the proffered position is in a specialty occupation pursuant to the alternative requirements of the second clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

Also, at a more basic level, the record lacks credible evidence that, when the petitioner filed the petition, the petitioner had secured work of any type for the beneficiary to perform during the requested period of employment. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The petition will be denied for this additional reason.

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.