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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

SEP 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:



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.

Thank you.

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.

The petitioner is a corporation that provides engineering services, inspection, and nondestructive testing on boilers and other industrial equipment. In order to employ the beneficiary in a position that it has designated as a Business/Market Research Analyst,<sup>1</sup> the petitioner endeavors to classify the beneficiary as a temporary 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 her determination that the proffered position is not a specialty occupation as that term is defined by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and the implementing regulations at 8 C.F.R. § 214.2(h)(4). The director expressly stated that the *Handbook* clearly indicates that a market research analyst job qualifies as a specialty occupation. However, she analyzed the proffered position as a marketing manager job, based upon her determinations that the proffered position is actually that of a marketing manager, and, as such, does not qualify as a specialty occupation. On appeal, counsel contends that the director erred in not recognizing that the evidence of record establishes that the petitioner is proffering a market research analyst position.

As will be discussed below, the AAO finds that the director was correct in denying the petition for the petitioner's failure to establish the proffered position as a specialty occupation. The AAO reaches this conclusion on the basis of its review of the entire record of proceeding, as supplemented by the submissions on appeal.

The AAO analyzes this issue according to the statutory and regulatory framework below.

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

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<sup>1</sup> The petitioner's counsel expressly asserts that the proffered position comports with the Market Research Analyst occupation as discussed in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. All of the AAO's references are to the 2010-2011 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

- (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 (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.

On appeal, counsel describes the duties of the proffered position as follows:

- i) Devise and design research strategies, utilizing marketing/market research theories, for the analysis of market data with the goals of determining present unprofitable practices and predicting potentially higher profit-yielding markets for our industry.
- ii) Research conditions in local, regional and national markets, demographics, and sectors, to determine the potential sales of our services, and, in which areas services can be expanded, that are related to this industry, e.g. mechanical electrical engineering consulting services. [Petitioner is planning to expand into the South in such states as North/South Carolina and Tennessee. . . .]
- iii) Research [in] which markets to most efficiently purchase equipment or goods, when needed.
- iv) Examine, analyze, and utilize statistical data based on financial models to forecast future market and marketing trends in the industrial equipment consultation services sector.
- v) Compile and identify customer demands based upon the interpretation of statistical evidence gathered through surveys and market research.
- vi) Analyze information and determine entry (requires decision-making) into potential service or product markets, or exit from existing unprofitable services.
- vii) Gather information on the techniques used by [the] competition (horizontal or vertical, may be potential areas of competition) to provide the basis for management decisions regarding, discount on (existing or potential) services provided.

- viii) Create more competitive pricing strategies for our services (in light of anticipated market information, our budget, our sales, etc.).
- ix) Advise on and create promotional features.
- x) Assist us in implementing the most profitable business practices for our range of services, e.g., improvement of our e-commerce services.

At the outset, the AAO withdraws the director's finding that the proffered position is a marketing manager job. On the basis of its review of the evidence of record regarding the proposed duties and the business context in which they would be performed, and in light of the information provided by the *Handbook* on the Market Research Analysts occupation, the AAO finds that, as the petitioner claims, the object of the petition is to employ the beneficiary in a market research analyst position. The AAO will evaluate the record of proceeding accordingly.

However, the AAO also disagrees with, and thus withdraws, the director's statement that the *Handbook* indicates that any bona fide market-research-analyst position categorically qualifies as a specialty occupation. The following excerpt from the "Training, Other Qualifications, and Advancement" section of the 2010-2011 *Handbook's* chapter "Market and Survey Researchers" indicates that a major or concentration in a specific specialty is not a normal aspect of the baccalaureate threshold for entry into the market research analyst occupation:

***Education and training.*** A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree is usually required for more technical positions.

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take social science courses, including economics, psychology and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines.

While in college, aspiring market and survey researchers should gain experience gathering and analyzing data, conducting interviews or surveys, and writing reports on their findings. This experience can prove invaluable toward obtaining a full-time position in the field, because much of the work may center on these duties. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or marketing research firms prior to graduation.

The excerpt indicates that a bachelor's degree is a normal minimum entry requirement for the market and survey researchers occupation, but not that the degree must be in a specific specialty.

The AAO also notes that, while the 2010-2011 *Handbook's* "Job prospects" subsection states that "the best" market-and-survey-researcher opportunities for bachelor's degree holders are for those "with good quantitative skills, including a strong background in mathematics, statistics, survey design, and computer science," it does not specify any particular academic majors or types of bachelor's degrees as requirements for entry into the occupation. Consequently, it is incumbent on the petitioner to establish that its particular position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties. However, the petitioner's acceptance of this particular beneficiary's educational credentials as adequate for the proffered position affirmatively establishes that the position cannot be classified as an H-1B specialty occupation because Section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B) limits the classification to positions that require "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 record's documentary evidence with regard to the beneficiary's educational credentials establishes no more than that she possesses a foreign degree that is equivalent to a United States bachelor's degree in business administration without a specific major or concentration. Counsel asserts that the beneficiary's courses in Marketing, Economics, and Statistics adequately equip her to perform as the petitioner's market research analyst. However, the beneficiary's academic transcript reveals only the following courses in these areas: Introduction to Economic Analysis (ECO 22); Principles of Marketing (MKT 21); Business Statistics (MATH 27); "Prin of Econ & Agr'n Reform" (ECO 11); and "Quantitative Tech. in Business (MATH 31).<sup>2</sup>

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) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a

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<sup>2</sup> As there is no documentary evidence of the content of the transcript's courses OJT 11 and OJT 12, they merit no probative weight, and the AAO discounts as uncorroborated the petitioner's assertion, in its September 16, 2008 letter of support, that both of these courses "involved considerable market research and analysis and marketing work." 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. 196 (Reg. Comm. 1972)).

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 139, 147 (1<sup>st</sup> Cir. 2007). For this reason alone, the appeal must be dismissed and the petition denied.

Although the above finding is dispositive of the appeal, the AAO also finds a separate and independent basis for dismissing the appeal. Aside from the issue of the academic credentials that the petitioner finds acceptable for the proffered position, the evidence of record about the position itself is insufficient to establish that the proffered position is a specialty occupation as that term is defined by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and the implementing regulations at 8 C.F.R. § 214.2(h)(4).

As framed by the two-part “specialty occupation” definition at section 214(i)(1) of the Act, the decisive issue is whether the evidence of record regarding the particular position that is the subject of the petition establishes that the position actually requires the theoretical and practical application of a body of highly specialized knowledge in a specific specialty, and the attainment of a baccalaureate or higher degree in that specialty. The AAO bases its determinations on the specialty occupation issue on the cumulative weight of the evidence in the record of proceeding regarding both the (1) particular theoretical and practical applications of highly specialized knowledge that the beneficiary would apply in the context of the petitioner’s operations and (2) the nature and level of education required to employ those applications.

In this particular record of proceeding, the AAO notes that the generic statements about the proffered position and its duties are sufficient to align the position with the broad occupational category of market research analysts as discussed in the *Handbook’s* “Market and Survey Researchers” chapter. However, these generalized statements are not sufficiently specific to distinguish the proffered position as a unique, complex, or specialized market research analyst position that requires at least a bachelor’s degree or its equivalent in a specific specialty as a minimum for entry into the occupation in the United States.

As the *Handbook* indicates that entry into the market-research-analyst occupation may occur with a degree with coursework in listed subjects but without a specific course of study culminating in a specific degree in the field, market research analyst positions do not categorically qualify under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, to satisfy this criterion, the petitioner must submit sufficient evidence to document not only that the proffered position is a marketing research analyst position (which has been accomplished), but also that for this “particular position” a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry. This the petitioner failed to do.

The petitioner describes the duties of the proffered position exclusively in generalized statements of broad generic functions (such as “Devise and design research strategies, utilizing marketing/market research theories;” “Research conditions in local, regional and national markets, demographics, and

sectors;" and "Examine, analyze, and utilize statistical data based on financial models to forecast future market and marketing trends in the industrial equipment consultation services sector." These descriptions do not convey the substantive nature of whatever applications of specialized knowledge the beneficiary would employ, and they do not provide an adequate evidentiary basis for the AAO to conclude that whatever specialized knowledge may be required is acquired only by obtaining at least a bachelor's degree, or the equivalent, in a specific specialty.

As the record of proceeding contains no documentary evidence that the proffered position is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

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 already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

The other firms' advertisements submitted into the record have no probative value beyond corroborating the *Handbook's* observation, already noted in this decision, that employers of market research analysts accept a wide variety of bachelor's degrees.

In short, the record of proceedings does not provide a basis for approving the petition under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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" in a specific specialty or its equivalent. As evident in the earlier discussion about the generalized descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as

unique from or more complex than market research analyst positions that can be performed by persons without a specialty degree or its equivalent.

As the record has not documented a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Nevertheless and as discussed above, the petitioner's own stated requirements for the position are dispositive of a finding that a minimum of a bachelor's degree or its equivalent in a specific specialty is a normal requirement of the petitioner for entry into the proffered position.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As reflected in the earlier discussion of the limited information about the proffered duties, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than market research analyst positions that are not usually associated with a degree in a specific specialty. Further, the petitioner has not presented any documentary evidence that the specific duties of the proffered position have the requisite specialization and complexity to satisfy this criterion.

For the reasons discussed above, the appeal will also be dismissed because the evidence of record about the proffered position fails to establish that it qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

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