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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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FILE: WAC 09 139 50964 Office: CALIFORNIA SERVICE CENTER Date: APR 01 2011

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:

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 \$630. 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,

*for Michael T. Kelly*  
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.

On the Form I-129 visa petition the petitioner stated that it is a real estate development firm with four employees. To employ the beneficiary in what it designates as a financial analyst position, the petitioner endeavors to classify him 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. Counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceeding, 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 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 (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. 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its

equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the visa petition, counsel submitted a letter, dated March 18, 2009, from the petitioner's vice president. In describing the proffered position, the petitioner's vice president stated:

As a Financial Analyst, [the beneficiary] will be involved in applying a variety of financial and business accounting procedures and techniques to the financial transactions for the development of business and financial information methodologies for multi-business environments; will perform financial statement analysis, forecasting, capital budget, revenue analysis, cash flow and risk venture analysis as well as being responsible for analyzing business process and developing detailed financial system requirements; will present reports on general economic trends in our industry; will monitor fundamental economic, industrial and corporate developments through analysis of all relevant information; will interpret data affecting our current and potential investment programs such as cost, profit, future trends and economic influences in making investment decisions; will assemble spreadsheets and draw charts and graphs used to illustrate financial reports that summarize the company's financial position such as income statement, balance sheet and analyses of earnings; will oversee company investments, manage associated risks, supervise cash management activities and execute capital-raising strategies for company's future expansion.

As to the educational requirement the petitioner imposes on the proffered position, the petitioner's vice president stated:

[The petitioner] requires as a prerequisite to employment in the described position the possession of, at minimum, a baccalaureate degree or its equivalency in Accounting, Finance, Business Administration or related discipline.

The AAO notes that accounting, finance, and business administration are not a single specific specialty. By stating that a degree in any of those diverse disciplines would qualify one to work in the proffered position, the petitioner's vice president has conceded that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, which is tantamount to an admission that the proffered position does not qualify as a position in a specialty occupation and that the visa petition may not be approved.

Further, even if the vice president had stated that the educational requirement of the proffered position could be satisfied by a degree in business administration, without further specification, that would indicate that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, that it does not qualify as a specialty occupation position, and that the visa petition may not be approved. This is because a petitioner is obliged to 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 correlation between the required specialized

studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position 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. As explained above, 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 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 (1st Cir. 2007).

That the petitioner's vice president - by the range of acceptable degree majors or academic concentrations which is not indicative of a body of highly specialized knowledge that would have been theoretically and practically applied to perform the duties of the proffered position - has implicitly conceded that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty and, in effect, conceded that it does not qualify as a position in a specialty occupation, is sufficient reason to dismiss the appeal in this matter and to deny the visa petition. Nevertheless, the AAO will continue the analysis of the specialty occupation issue.

Because the evidence submitted did not establish that the proffered position qualifies as a specialty occupation position, the service center, on May 5, 2009, issued an RFE in this matter. The service center requested, *inter alia*, additional evidence to demonstrate that the proffered position qualifies as a specialty occupation.

In response counsel submitted a letter, dated June 15, 2009, in which he reiterated the previously submitted description of the duties of the proffered position. Counsel added:

In the performance of his duties the Beneficiary will recommend the purchase of properties for development (commercial and residential) after conducting a thorough analysis of the financial information taking into consideration such factors as demographics, potential use of properties and specific plans. In carrying out this objective the Beneficiary will in part analyze financial information to project future revenues and expenses; analyze market conditions of the area(s) in which the potential property(ies) is located; calculating financial projections based upon research data; create statistical diagrams; evaluate degree(s) of financial risk(s); prepare financial reports using in part statistical cost estimation methods.

Counsel restated that the position requires a degree, but did not state any specific specialty that degree must be in.

The director denied the visa petition on July 22, 2009 finding, as was noted above, that the petitioner had failed to demonstrate that the petitioner would employ the beneficiary in a specialty occupation position.

On appeal, counsel submitted an evaluation of the proffered position prepared by an associate professor at the University of Maryland Robert H. Smith School of Business. The associate professor analyzed the description of duties originally provided by the petitioner's vice president and asserted that, based on his professional opinion, performance of those duties would require a minimum of a bachelor's degree or the equivalent in finance, business administration, or a related area.

At the outset, it is important to note that the AAO finds that the professor's evaluation is not probative evidence that the proffered position is a specialty occupation. As such, the evaluation has no weight towards establishing any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

There is no documentary evidence establishing the professor as a recognized authority on either the educational requirements for the petitioner's industry or on specialty occupation classification. Further, the professor misstates the character of a specialty occupation under the Act by failing to recognize that the defining educational requirement is not just a baccalaureate or higher degree, but one in a specific specialty closely related to the duties of the proffered position.

Also, the professor provides no studies, treatises, statistical reviews, or any other empirical basis for his pronouncement about the industry's standard educational requirements for the type of position at issue. Further, the AAO finds the professor's level of analysis superficial and cursory. For instance, there is no discussion of how the operation of the generalized and generic duties which the professor quotes would translate into specific types of work requiring the courses cited by the professor.

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).

In his appeal brief, counsel asserted, "The minimum requirement for entry into this position as described by the Petitioner is a baccalaureate degree or its equivalency [sic] in Accounting, Finance, Business Administration or a related discipline."

Counsel and the petitioner's vice president asserted that the proffered position requires a minimum of a bachelor's degree or the equivalent in accounting, finance, business administration, or a related discipline. The associate professor stated that the proffered position requires a minimum of a bachelor's degree or the equivalent in finance, business administration, or a related area. Both of those arrays of subjects include a degree in business administration, without further specification, as a sufficient educational qualification for the proffered position. As was explained above, any position with an educational requirement that can be satisfied by an otherwise undifferentiated degree in business administration does not qualify as a specialty occupation position.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> The *Handbook* describes the duties of financial analyst positions as follows:

*Financial analysts* provide guidance to businesses and individuals making investment decisions. Financial analysts assess the performance of stocks, bonds, commodities, and other types of investments. Also called *securities analysts* and *investment analysts*, they work for banks, insurance companies, mutual and pension funds, securities firms, the business media, and other businesses, making investment decisions or recommendations. Financial analysts study company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates to determine a company's value by projecting its future earnings. They often meet with company officials to gain a better insight into the firms' prospects and management.

That section of the *Handbook* does not include real estate developers or builders among the firms that would typically employ a financial analyst, or even retain one occasionally on a contract basis. It does not indicate that financial analysts are expert in determining the value of undeveloped real estate, or of finished lots, or a completed residential or commercial property. Those determinations would more typically be performed by a real estate appraiser, which does not qualify as a position in a specialty occupation.

Considerable question remains pertinent to whether the petitioner has shown that it would employ the beneficiary as a financial analyst. However, the AAO will assume, *arguendo*, that the petitioner would employ the beneficiary as a financial analyst, as it claims.

The *Handbook* describes the educational requirements of financial analyst positions as follows: "A bachelor's or graduate degree is required for financial analysts. Most companies require a bachelor's degree in a related field, such as finance, business, accounting, statistics, or economics."

The *Handbook* indicates that a bachelor's degree is routinely required of financial analysts. However, it does not indicate that such positions require a degree *in any specific specialty*. Rather, it indicates that a degree in any of a wide variety of subjects would suffice. Further, it indicates that a generalized degree in business, without further specification, would qualify one for such a position. As was explained above, a position that may be held by a person with a degree in any of a wide variety of subjects does not qualify as a position in a specialty occupation and a position with an educational requirement that may be satisfied by one with an otherwise undifferentiated degree in business does not qualify as a specialty occupation position.

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<sup>1</sup> 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.

Neither the *Handbook* nor any other evidence in the record indicates that financial analyst positions typically require a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not, therefore, demonstrated that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will consider the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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)).

The *Handbook*, as was observed above, does not support the assertion that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence that any professional association of financial analysts requires a minimum of a bachelor's degree or the equivalent in a specific specialty for admission. Counsel provided no letters from firms or individuals in the real estate development and building industries attesting that they routinely recruit and employ only financial analysts with a minimum of a bachelor's degree or the equivalent in a specific specialty. Counsel provided no vacancy announcements to support that assertion. In short, the record contains no evidence to support the assertion that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which would be satisfied if the petitioner demonstrated that, notwithstanding that financial analysts in general may not require a minimum of a bachelor's degree or the equivalent in a specific specialty, the particular proffered position in the instant case is so complex or unique that it can only be performed by an individual with a such a degree.

Nothing in the record, however, indicates that the proffered position is unique or more complex than other financial analyst positions not requiring a bachelor's degree in a specific specialty. The duties described are generic financial analyst duties. In this regard, the AAO finds that the duties are described in terms of generalized and generic functions – such as "applying a wide variety of financial and business accounting procedures and techniques to the financial transactions for the development of business and financial information technologies for multi-business environments" –

that are so nebulous as to provide no indication of uniqueness or the relative level of complexity that may reside in the proffered position.

Further, as was previously noted, counsel, the petitioner's president, and the associate professor who provided an evaluation of the proffered position all asserted that the educational requirements of the proffered position could be satisfied by a degree in any of an array of subjects, including an otherwise unspecified degree in business administration. This makes yet more clear that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with a degree; and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore demonstrated that it normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty for the proffered position. Further, the petitioner's president indicated that it would accept a degree in any of a wide array of subjects, including an unspecified degree in business administration. This demonstrates that the position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will consider the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates 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.

The AAO here incorporates its earlier comments regarding the generalized and generic nature of the duties as described in the record of proceeding. The AAO finds that the petitioner has failed to develop the proposed duties sufficiently to establish the level of specialization and complexity required by this criterion. It is not self-evident that presenting reports on general economic trends, or assembling spreadsheets and drawing charts and graphs to illustrate financial reports, for instance, requires a minimum of a bachelor's degree or the equivalent in a specific specialty. To the contrary, counsel, the petitioner's vice president, and an associate professor indicated that a variety of degrees, *including an otherwise unspecified degree in business administration*, would prepare one to perform those duties. The petitioner has not, therefore, demonstrated 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. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

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.