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U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090

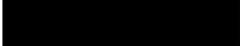


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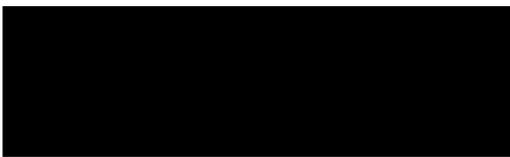
D2



Date: **APR 29 2011** Office:  FILE: 

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)

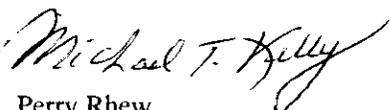
ON BEHALF OF PETITIONER:  


**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 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 media company with two employees that was established during 2008. To employ the beneficiary in what it designates as a "Producer/Journalist" position, 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 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. In support of these contentions, 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 first request for additional evidence (RFE) and the response; (3) the petitioner's second RFE and the response; (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 president. That letter contains the following description of the duties of the proffered position:

[The beneficiary] will be responsible for providing in-depth background research for the television coverage of entertainment and sport events; She will analyze and edit raw materials and provide the analysis report and edit footage to the television networks; She will plan production activities and work together with the television networks production teams to cover major entertainment and sports events in the U.S. such as the NBA All-Star Games, Oscar Awards Ceremonies, and the Emmy Awards Ceremonies; She will conduct interviews with NBA players, movie stars, and professional singers who are of special interest to the TV audiences; She will edit and produce entertainment and sports news reports in writing and in television format to be used and selected by television networks; She will provide other production and journalist services as specifically requested by the networks in the area of sports and entertainment.

The letter also states: "This position requires at least a Bachelor's Degree in Journalism, Communications, or any closely related field of study." As will be discussed in the course of the AAO's analysis below, the evidence in the record of proceeding does not substantiate this assertion. Therefore, the assertion has no evidentiary weight. 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. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The service center issued an RFE in this matter on May 6, 2009. The subject matter of that first RFE, however, is not directly related to the basis for the denial of the visa petition. However, because the evidence provided did not demonstrate that the petitioner would employ the beneficiary in a specialty occupation, the service center, on June 29, 2009, issued a second RFE in this matter. In that second RFE, the service center requested additional evidence to demonstrate that the proffered position qualifies as a specialty occupation position.

In response, counsel provided copies of vacancy announcements taken from popular job search websites. The AAO notes that the record contains other vacancy announcements, which were submitted on appeal. The AAO will now examine all of the vacancy announcements submitted into the record of proceeding. As will be evident in the review of those announcements below, not only

are they not probative evidence that the proffered position requires at least a bachelor's degree in a specific specialty, but they also are indicative of the fact, related in the pertinent chapter of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, later discussed in this decision, that the proffered position does not belong to an occupational group that categorically requires the educational credentials asserted by the petitioner and its counsel.

One of the vacancy announcements submitted was placed by [REDACTED] for a Senior Journalist to work in [REDACTED]. It states that the position requires a college degree, but not that the degree must be in any specific specialty.

Another announcement is for an associate producer to work for [REDACTED] radio in [REDACTED]. It states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another announcement is for a reporter to work for CBS in [REDACTED]. It states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another announcement was placed by the broadcast television division of an unidentified organization for an associate producer to work in [REDACTED]. It states that the position requires a bachelor's degree in a related discipline, but does not specify what disciplines might be considered to be related to an associate producer job.

The final announcement was placed by [REDACTED] World News for a bi-lingual reporter producer to work in [REDACTED]. It states that the position requires a college degree in journalism, television broadcasting, or communications.

Clearly, the spectrum of the vacancy announcements are not indicative of a position requiring at least a bachelor's degree, or the equivalent, in a specific specialty – which requirement is the hallmark of a specialty occupation.

On appeal, in his own letter, dated July 8, 2009, counsel provided what purports to be a longer description of the duties of the proffered position. Counsel did not state his basis for asserting that the proffered position entails the additional duties in that enhanced description. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

On appeal, counsel also asserted that the proffered position is a journalist position, and cited the *Handbook* and other DOL publications for the proposition that journalist positions require bachelor's degrees.

On July 24, 2009 the director denied the visa petition finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation position. On

appeal, counsel again asserted that the proffered position is a position for a journalist and that journalist positions are specialty occupation positions.

In addition to the *Handbook*, counsel cited the DOL's *O\*NET Online (the O\*NET)* for the proposition that journalist positions require a bachelor's degree. The AAO observes that the *O\*NET* places journalist positions in Job Zone Four, which indicates that most such positions require a four-year college degree, but some do not.<sup>1</sup> Besides not supporting the assertion that a bachelor's degree is the minimum requirement for journalist positions, the *O\*NET* contains no indication that reporter or journalist positions, even those that may require a bachelor's degree, require a degree *in a specific specialty*.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> The *Handbook* addresses journalist positions in the section entitled News Analysts, Reporters, and Correspondents, and describes the duties of those positions as follows:

In covering a story, *reporters*, sometimes referred to as *journalists*, investigate leads and news tips, look at documents, observe events at the scene, and interview people. Reporters take notes and also may take photographs or shoot videos. At their office, they organize the material, determine the focus or emphasis, write their stories, and edit accompanying video material. Many reporters enter information or write stories on laptop computers and electronically submit the material to their offices from remote locations. Increasingly, reporters are asked to maintain and produce material for a newspaper's Web site. In some cases, *newswriters* write a story from information collected and submitted by reporters. Radio and television reporters often compose stories and report "live" from the scene. At times, they later tape an introduction to or commentary on their story in the studio.

The AAO concurs that the proffered position is a position for a journalist, or reporter, as described in the *Handbook*. The *Handbook* describes education pertinent to journalist positions as follows:

More than 1,500 institutions offer programs in communications, journalism, and related programs. In 2008, more than 100 of these were accredited by the Accrediting Council on Education in Journalism and Mass Communications. Most of the courses in a typical curriculum are in liberal arts; the remaining courses are in journalism. The most important skills for journalism students to learn are writing and communication. Students planning a career in broadcasting take courses in radio and

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<sup>1</sup> The *O\*Net* section includes journalists in the section pertinent to reporters and correspondents, which positions are discussed at <http://www.onetonline.org/link/summary/27-3022.00>.

<sup>2</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.

television news and production. Those planning newspaper or magazine careers usually specialize in more specific forms of writing. To create stories for online media, they need to learn to use computer software to combine online story text with audio and video elements and graphics.

Some schools also offer a master's or Ph.D. degree in journalism. Some graduate programs are intended primarily as preparation for news careers, while others prepare journalism teachers, researchers and theorists, and advertising and public-relations workers.

High school courses in English, journalism, and social studies provide a good foundation for college programs. Useful college liberal arts courses include English, with an emphasis on writing; sociology; political science; economics; history; and psychology. Courses in computer science, business, and speech are useful as well. Fluency in a foreign language is necessary in some jobs.

Employers report that practical experience is the most important part of education and training. Upon graduation, many students already have gained much practical experience through part-time or summer jobs or through internships with news organizations. Most newspapers, magazines, and broadcast news organizations offer reporting and editing internships. Work on high school and college newspapers, at broadcasting stations, or on community papers also provides practical training. In addition, journalism scholarships, fellowships, and assistantships awarded to college journalism students by universities, newspapers, foundations, and professional organizations are helpful. Experience as a freelancer or stringer—a part-time reporter who is paid only for stories printed—is advantageous.

The AAO finds that, as evident in the excerpt above, the *Handbook* does not indicate that a bachelor's degree, or the equivalent, in Journalism, Communications, or a related field is normally a minimum requirement for entry into the journalist occupation. The *Handbook* offers no support, therefore, for the assertion that journalist or reporter positions qualify as specialty occupation positions under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Further, the record of proceeding contains no other evidence to support that they do.

For the reason's discussed above, the petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered 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 noted above, does not support the proposition that a bachelor's degree in a specific specialty is normally a minimum requirement for journalist positions. Further, the record of proceeding does not document that the industry's professional association has made a bachelor's degree, or the equivalent, in a specific specialty a minimum entry requirement. Additionally, the record of proceeding does not include letters or affidavits from firms or individuals in the industry that attest that such firms routinely employ and recruit only persons with at least a bachelor's degree, or the equivalent, in specific specialty. "

Here the AAO will again review the five vacancy announcements submitted into the record of proceeding. However, the AAO also here incorporates by reference, and adopts as part of the discussion of this criterion, this decision's earlier discussion of the advertisements' negligible evidentiary weight.

All of the vacancy announcements specify a college degree as a hiring requirement. Three of the five, however, do not indicate that the requisite degrees must be in any specific field. They do not indicate that the positions they announce require a minimum of a bachelor's degree or the equivalent in a specific specialty and do not, therefore, indicate that those advertised positions are specialty occupation positions. They are, therefore, of no weight in demonstrating that the proffered position is a specialty occupation position.

Of the remaining two vacancy announcements, one specifies a bachelor's degree in a "related discipline," and so does not identify any specific specialty. The other specifies a degree in journalism, television broadcasting, or communications.

In any event, even if all five vacancy announcements had been for parallel positions within similar organizations in the petitioner's industry, and even if all five had unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, they would be insufficient to demonstrate that such a requirement is common to the petitioner's industry, as the five vacancy announcements are insufficient to establish that they represent an industry-wide requirement, or even, for that matter, that they are representative of exclusive recruiting and hiring standards employed by the related firms for the types of positions advertised.

As the record contains no other evidence to suggest 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 satisfied 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 second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner demonstrates that, notwithstanding that other nominally similar positions may not require a specialized degree, the proffered position is either so complex or unique that it can be performed only by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO finds that the evidence submitted into the record does not develop either relative complexity or uniqueness as elements of the proffered position. While the record of proceeding indicates that the beneficiary would interview newsworthy people, predominantly sports figures, but including other celebrities, and produce news reports for television and print media, such duties appear to be the routine for a producer/journalist, and no details are developed to show otherwise.

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. Counsel, in his July 8, 2009 response to the second request for evidence, observed, "The Petitioner is a new business incorporated at the end of 2008. It does not have past employment practices." The petitioner, therefore, has not demonstrated that it normally requires a degree for the proffered position and has not, therefore, demonstrated 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).

The final alternative requirement is that 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 of the proffered position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

However, as reflected in this decision's analysis of the alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), to the extent that they are developed in the record of proceeding - which the AAO finds to be at a generalized and generic level - the duties of the proffered position do not indicate that their performance would require the application of a body of highly specialized knowledge in any specific specialty, let alone that such a body of knowledge would be at a level normally associated with at least a bachelor's degree in a specific specialty. The record contains nothing to suggest that those duties are usually associated with attainment of such a degree. Therefore, the petitioner has not 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).

For the reasons discussed above, 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

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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.