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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

D2

[redacted]

Date: DEC 09 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[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 $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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, 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 remain denied.

The petitioner provides electronic payment solutions. It was established in 2009 and employed 24 personnel and projected a gross annual income in 2009 of $12 million when the petition was filed. It seeks to employ the beneficiary as a human resources manager 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, concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129, Petition for Nonimmigrant Worker, and supporting documentation; (2) the director's request for additional evidence (RFE) and the petitioner's response to the RFE; (3) the director's denial letter; and (4) Form I-290B, Notice of Appeal or Motion, with counsel's brief and additional documentation. The AAO reviewed the record in its entirety before reaching its decision.

The central issue is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> An occupation which requires [1] 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 requires [2] 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 and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such 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.

In this matter, the petitioner seeks the beneficiary's services as a human resources manager. The petitioner, in its November 9, 2009 letter in support of the petition, listed the specific duties of the proffered position as:

- Overseeing day-to-day employee relations issues, responding to employee relations issues with management and staff, conducting investigations,

participating in handling legal charges, and assisting with the resolution of conflicts and other issues;

- Investigating all complaints and coordinating a prompt resolution to ensure effective investigation, documentation, and corrective action plans in accordance with company, Federal and State guidelines;
- Overseeing the counseling of employees regarding work related problems. Assisting management with determining proper disciplinary action and ensuring proper documentation;
- Developing formal review documents and procedures and training management on how to implement these reviews and submitting same to the Board for approval;
- Establishing and implementing effective manpower planning, recruitment, and staffing strategies;
- Maintaining the approval process for additions to staff, and ensuring appropriate staffing levels at all operation centers;
- Developing and implementing cost effective recruitment strategies to ensure a supply of highly qualified and talented candidates for vacant positions;
- Direct hiring function, including interviews, new hire induction, orientation and creation of all new hire documentation;
- Serving as company Privacy Officer to ensure HIPAA compliance;
- Coordinating health and dental benefits services with benefits brokers;
- Assisting employers with claims, researching and answering employees questions concerning benefits and paying checks, as needed;
- Managing all areas of payroll submission and distribution, attendance monitoring and timesheet review; and
- Direction, selecting and developing Human Resource Department staff and ensuring their ability to meet the department standards, goals and objectives.

The petitioner stated that it had determined the minimum prerequisite to perform the tasks described is a "professional degree in a Business discipline such as Organizational Behavior, Management, or a closely related field." The Labor Condition Application (LCA) attached to the petition indicated the position was for a human resources manager at an annual salary of $75,000 and was certified on November 3, 2009 for a validity period from November 15, 2009 until November 14, 2012.

On November 17, 2009, the director issued an RFE requesting additional evidence that the proffered position is a specialty occupation, including a more detailed job description and any evidence demonstrating factors that distinguished the proffered position from those positions that did not require a degree in a specific field of study and qualified as a specialty occupation. The RFE also requested additional information regarding the nature of the petitioner's business.

In response to the RFE, the petitioner stated that the beneficiary would carry out responsibilities in the functional areas of departmental development, employee relations, training and development, benefits, compensation, organization development, executive administration, and employment. The petitioner also expanded upon the list of the beneficiary's activities initially submitted. The petitioner also provided seven advertisements to establish an industry norm of

requiring a bachelor's degree in a specific specialty for the position of human resources specialist. Two of the advertisements although listing a bachelor's degree did not indicate whether the degree was preferred or required. One of the advertisements indicated that either a bachelor's degree in human resources or experience was suitable for the advertised position. One advertisement indicated that a bachelor's degree in accounting, economics, or statistics was preferred and the remaining three advertisements although indicating that a bachelor's degree was required did not specify a field of study. In addition, the advertisements provided an overview or general description of the duties of the proffered position. Further although the advertisements were generally from banking, finance, accounting mortgage or consulting firms, the advertisements did not provide sufficient information regarding the number of employees of the company or other information to ascertain that the organizations were actually similar to the petitioner.

The petitioner also provided four responses to electronic mail sent by the beneficiary to various firms asking for minimum requirements for an HR Manager in a small to medium sized firm in California. Three of the four individuals responding indicated that most firms would require a bachelor's degree in an unspecified field of study; one individual indicated that a bachelor's degree in business would be required. The petitioner's job posting for the proffered position indicated that a business related degree was required.

The director denied the petition on December 17, 2009.

On appeal, counsel for the petitioner asserts that the petitioner is a start-up company with 24 employees and its size and volume are expanding, requiring the full-time services of a human resources manager. Counsel provides the petitioner's business plan, its current number of employees, financial projections, and a human resources strategy presentation prepared by the beneficiary in support of the assertion. Counsel contends that the importance of the petitioner's human resources manager cannot be underestimated as the human resources manager "plays a key role in advising top management regarding human resources strategic planning and implementation in order to attract, motivate and retain the most qualified and talented employees for the Company." Counsel references the Department of Labor's *Occupational Outlook Handbook's* (*Handbook*) chapter on Human Resources, Training and Labor Relations Managers and Specialists and points out that the *Handbook* indicates that a bachelor's degree is the entry level requirement for the position of human resources manager. Counsel avers that the duties associated with the proffered position require the services of a degreed individual. Counsel also provides the resume of the individual who served as the petitioner's human resources manager prior to the beneficiary's employment which shows that the individual possessed a bachelor's degree in business administration. Counsel also attaches three letters from organizations similar to the petitioner which indicate that a bachelor's degree in human resources administration, organizational behavior, or a related field is the standard minimum requirement for the position of human resources manager among similar organizations in the industry. Upon review of the three letters, the letter-writers provide verbatim statements indicating they would not hire a human resources manager without a bachelor's degree and that the requirement for a bachelor's degree in human resources administration, management or organizational behavior is a common requirement for the position of human resources manager in their industry. Counsel concludes that the petitioner has established that the proffered position is a position that can only be performed by an individual with a degree.

To make its determination whether the employment described qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(1)* and *(2)*: a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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 Human Resources Manager occupational category is addressed in the *Handbook* (2010-2011 online edition) – "Human Resources, Training, and Labor Relations Managers and Specialists."

The *Handbook* first notes under "Significant Points": "[t]he educational backgrounds of these workers vary considerably, reflecting the diversity of duties and levels of responsibility." In the section on education and training, the *Handbook* states in pertinent part:

> In filling entry-level jobs, many employers seek college graduates who have majored in human resources, human resources administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.
>
> Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business administration, and behavioral sciences is useful.
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> * * *
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> The duties given to entry-level workers will vary, depending on whether the new workers have a degree in human resource management, have completed an internship, or have some other type of human resources-related experience. Entry-level employees commonly learn by performing administrative duties—helping to enter data into computer systems, compiling employee handbooks, researching information for a supervisor, or answering phone calls and handling routine questions. Entry-level workers often enter on-the-job training programs in which they learn how to classify jobs, interview applicants, or administer employee benefits; they then are assigned to specific areas in the human resources department to gain experience. Later, they may advance to supervisory positions, overseeing a major element of the human resources program—compensation or training, for example.
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> * * *
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> Many employers prefer entry-level workers who have gained some experience through an internship or work-study program while in school. Employees in

> human resources administration and human resources development need the ability to work well with individuals and a commitment to organizational goals. This field demands skills that people may have developed elsewhere—teaching, supervising, and volunteering, among others. Human resources work also offers clerical workers opportunities to advance to more responsible or professional positions. Some positions occasionally are filled by experienced individuals from other backgrounds, including business, government, education, social services administration, and the military.

Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at http://www.bls.gov/oco/ocos020.htm (last accessed December 2011).

Thus the *Handbook* finds a number of fields of study suitable for entry into the position of human resources manager. While many employers may seek college graduates who have majored in human resources, human resources administration, or industrial and labor relations, the *Handbook* does not state that many employers require these specific fields of study for entry into the position of human resources manager. Rather, as the *Handbook* notes entry-level employees may have degrees in human resource management, may have completed an internship, or may have other types of human resources-related experience. Some have developed the skills necessary for this position by teaching, supervising or volunteering or by advancing from clerical positions. The diversity in the acceptable methods for preparing to work in this position precludes a determination that a baccalaureate or higher degree in a *specific specialty* or its equivalent is the normal minimum requirement for entry into the position. As the *Handbook* recognizes a wide spectrum of degrees and experiences for employment as a human resources specialist, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a *specific specialty*.

To reiterate an occupation is not categorically a specialty occupation under this first criterion unless the occupation requires a baccalaureate or higher degree or its equivalent in a *specific specialty* as the normal minimum requirement for entry into the particular position. As the *Handbook* neither identifies a baccalaureate degree in a specific discipline nor identifies a baccalaureate degree as the normal minimum requirement for entry into the position of human resources manager, the occupation of human resources manager is not a specialty occupation. The director's implication that a human resources manager for a large company is categorically a specialty occupation is withdrawn. The AAO finds that the petitioner has not established its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied 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.

As stated earlier, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava,* 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The petitioner's reliance upon the job vacancy advertisements is misplaced. Rather than establishing that the occupation of human resources manager requires a bachelor's degree in a specific discipline, the advertisements confirm the *Handbook's* report that a general bachelor's degree is sufficient to perform the duties of the occupation, and not at least a bachelor's degree or the equivalent in a *specific specialty*. Of the two advertisements that specify a particular field of study, one indicates that experience rather than a bachelor's degree in human resources may be sufficient and the second indicates that a degree in accounting, economics or statistics is preferred but not required. In addition, as observed above, the advertisements do not provide sufficient information to conclude that the duties of the advertised positions are parallel to the petitioner's described position or that the organizations are similar to the petitioner.

The responses to the beneficiary's electronic mail request to other individuals regarding their hiring practices also confirm that the standard within the industry may be an unspecified bachelor's degree or a bachelor's degree in a general field of study. Moreover, the information included in the electronic mail chain is insufficient to establish that the individuals responding are similar to the petitioner's industry. The AAO has reviewed the three "industry letters" submitted on appeal. First, the letters all provide verbatim language when concluding that a bachelor's degree in human resources administration, management, or organizational behavior is a common requirement for the position of human resources manager. This raises questions regarding the genuineness of the letters. Second, the three letter-writers all indicate that they would not consider hiring a human resources manager who did not possess at least a bachelor's degree – they do not indicate that the bachelor's degree must be in a specific discipline.

Upon review of the totality of the record, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.

The petitioner also failed to satisfy 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." The evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for a human resources manager, including degrees not in a specific specialty. Specifically, even though the petitioner claims that the proffered position's duties are so complex and unique that a bachelor's degree in a specific specialty is required, the petitioner failed to demonstrate how the duties require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. The AAO acknowledges counsel's assertions on appeal that the duties involve knowledge of legal requirements and rules and regulations; however, neither counsel nor the petitioner set forth the specific and precise course

of study an individual must complete to perform those duties. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 ('Reg. Comm'r 1972)). The petitioner has not provided sufficient information relevant to a detailed course of study leading to a specialty degree and has not then established how such a curriculum is necessary to perform the duties it claims are so complex and unique. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than a human resources manager position that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

The AAO has reviewed the resume of the individual who counsel claims previously held the proffered position. We first observe that this record of proceeding does not include documentary evidence substantiating the educational credentials of the petitioner's previous human resources manager. Again 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. at 165. Moreover, even if the previous human resources manager's bachelor's degree in business administration had been substantiated, a general-purpose bachelor's degree such as a degree in business administration, 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).[1] The petitioner's recognition in this matter that the duties of the proffered position may be performed by an individual with only a general-purpose bachelor's degree is tantamount to an admission that the proffered position is not in fact a specialty occupation. As the record has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO here augments its earlier comments regarding the petitioner's failure to provide probative information regarding the specific course of study closely and directly related to the position in question. In

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[1] Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

> [t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: elsewise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

addition, in assessing the actual duties of the position, not the occupation or the industry-wide standard associated with the occupation, the record does not include probative evidence that the duties of the proffered position contain elements different from that of a human resources manager, an occupation that does not require a bachelor's or higher degree in a specific specialty to perform the duties of the position. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a human resources manager. It is not that the duties are routine or clerical, they are not; rather the duties as described by the petitioner are not distinguishable from the duties of other human resources managers, again, an occupation that does not require a bachelor's degree in a specific discipline. To the extent that they are described in the record of proceeding, the duties of the proffered position do not appear more specialized and complex than a human resources manager position not associated with the attainment of at least a bachelor's degree in a specific specialty. The AAO, therefore, concludes that the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petition will be denied and the appeal dismissed. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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