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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
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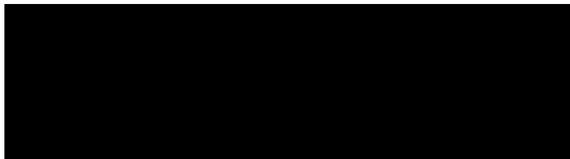
Date: **DEC 28 2011** Office: CALIFORNIA SERVICE CENTER

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner states that it is an information technology development, consulting, and services firm established in 2005. It seeks to employ the beneficiary as a technical writer and 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 on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue for consideration is whether the petitioner's proffered 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 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*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 [(2)] which 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, a proposed 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 382, 387 (5th Cir. 2000) (hereinafter *Defensor*). 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), 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.

The petitioner states that it is seeking the beneficiary's services as a technical writer. In the March 30, 2009, letter of support, the petitioner states that the beneficiary will:

work on two-house projects, “P-One InfoLoader” and “P-One Solution

Synthesizer” as a [t]echnical [w]riter. As a [t]echnical [w]riter [the beneficiary] will collaborating [sic] with Final User Community of the required documentation to ensure enhanced interest in readership; customize the [d]ocument [c]ontent format, design, layout and the [sic] structure based on requirements; and edit, [p]roof[r]ead, [c]ross-[r]eference and index documentation to ensure consistent and clear documentation. The [t]echnical [w]riter will create language and style guides, content of the documents, specifications for designing and drawing, technical diagrams, workflows, flowcharts, and process diagrams; create documentation templates, [o]nline help and user manuals, [t]echnical [d]ocumentation[,] [u]ser [f]unctional [s]pecifications, [t]esting [d]ocumentation, [i]nstallation [g]uides, [r]elease [n]otes, [u]ser [i]nterface [d]esign [and] messaging, [w]eb [w]riting; and writing expert product documentation for [d]ocumentation products, particularly [d]ocumentum XML applications.

The petitioner also states that the minimum requirement for the proffered position is a bachelor’s degree in communications, journalism, English, engineering, business, a related analytic or scientific discipline, or its equivalent in education or work-related experience.

The petitioner submitted a copy of the beneficiary’s foreign degree and diplomas, but did not submit a credential evaluation with the petition.

On May 26, 2009, the director issued an RFE requesting that the petitioner submit a new Form I-129 H-1B Data Collection Supplement and respond to the question regarding TARP funding.

On June 10, 2009, the petitioner submitted a new Form I-129 H-1B Data Collection Supplement and answered the TARP funding question.

The director issued another RFE on August 31, 2009 requesting that the petitioner submit, inter alia, (1) a more detailed description of the work to be performed by the beneficiary; (2) a line-and-block organizational chart showing the petitioner’s hierarchy and staffing levels; (3) job vacancy announcements; (4) the petitioner’s job vacancy announcements for the proffered position; (5) evidence to establish that the petitioner has a past practice of hiring persons with a baccalaureate degree or higher in a specific specialty to perform the duties of the proffered position; and (6) an evaluation of the beneficiary’s foreign educational credentials.

On September 30, 2009, in response to the director’s RFE, the petitioner submitted, in part, (1) the same job description from the petitioner’s support letter dated March 30, 2009; (2) a line-and-block organizational chart; (3) job vacancy announcements; and (4) the beneficiary’s credential evaluation.

The director denied the petition on December 1, 2009.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns 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* (hereinafter the *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)).

On appeal, counsel for the petitioner argues that the proffered position is a speciality occupation and that the petitioner demonstrated that the proffered position meets all of the four criteria as listed at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel also argues that the 2010-11 edition of the *Handbook* states that a baccalaureate degree is required for the proffered position. In addition, counsel includes an expert opinion letter from [REDACTED], tenured [REDACTED] and [REDACTED]

The AAO turns first to the 2010-11 edition of the *Handbook* on technical writers. 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>1</sup> The AAO notes that the proffered position as described in the record of proceeding substantially comports with the *Handbook's* description of the Technical Writers occupation. For instance, the petitioner states that the beneficiary will "create language and style guides, content of the documents, specifications for designing and drawing, technical diagrams, workflows, flow charts and process diagrams; create documentation templates, [o]nline help and user manuals, [t]echnical [d]ocumentation[,] [u]ser [f]unctional [s]pecifications, [t]esting [d]ocumentation, [i]nstallation [g]uides, [r]elease [n]otes, [u]ser [i]nterface [d]esign [and] messaging, [w]eb [w]riting; and writing expert product documentation for [d]ocumentation products, particularly [d]ocumentum XML applications."

The *Handbook's* description of technical writers is, in part, as follows:

Technical writers, also called technical communicators, put technical information into easily understandable language. They work primarily in information-technology-related industries, coordinating the development and dissemination of technical content for a variety of users... Included in their products are *operating instructions, how-to manuals, assembly instructions,*

<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.

*and other documentation needed for online help* and by technical support staff, consumers, and other users within the company or industry.

\* \* \*

Technical writers often work with engineers, scientists, computer specialists, and software developers to manage the flow of information among project workgroups during development and testing... Technical writers also oversee the *preparation of illustrations, photographs, diagrams, and charts*. Technical writers increasingly are using a variety of multimedia formats to convey information in such a way that complex concepts can be understood easily by users of the information.

\* \* \*

Technical writers may work with *graphic design, page layout, and multimedia software*; increasingly, they are preparing documents by using the interactive technologies of the Web to blend text, graphics, multidimensional images, and sound.

\* \* \*

Some technical writers work on a freelance or contract basis. They either are self-employed or work for a technical consulting firm and may be hired to complete specific short-term or recurring assignments, such as writing about a new product or coordinating the work and communications of different units to keep a project on track. Whether a project is to be coordinated among an organization's departments or among autonomous companies, technical writers ensure that the different entities share information and mediate differences in favor of the end user in order to bring a product to market sooner.

See Bureau of Labor Statistics, U.S. Dept. of Labor, Occupational Outlook Handbook, 2010-11 Ed., "Technical Writers," available at <http://www.bls.gov/oco/ocos319.htm> (accessed Dec. 12, 2011).

As will now be discussed, the *Handbook* indicates that technical writers do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty. *Id.*

The "Significant Points" section of the *Handbook* states that "[m]ost jobs in this occupation require a college degree – preferably in communications, journalism, or English – but a degree in a technical subject may be useful." *Id.* This statement does not support the view that a technical writer job qualifies as a specialty occupation. First, the definition of "most" in *Webster's New Collegiate Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of technical writer

positions require at least a bachelor's degree, it could be said that "most" technical writer positions require such a degree. Second, and more importantly, the *Handbook* only lists certain majors as a preference, not a requirement. It cannot be found, therefore, that a preference for a particular degree for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner.<sup>2</sup>

Furthermore, the introduction to the "Training, Other Qualifications, and Advancement" section of the *Handbook* states that "[a] college degree is required for a position as a technical writer." *Id.* While the *Handbook* appears to contradict itself by stating in this section that a baccalaureate degree is required for technical writer jobs, again, it does not indicate that the degree held by such workers must be in a specific specialty, as would be required for the occupational category to be recognized as a specialty occupation.

That the *Handbook* does not indicate that technical writer positions normally require at least a bachelor's degree in a specific specialty is also evident in the following discussion in the "Training, Other Qualifications, and Advancement" section of its chapter "Technical Writers," which does not specify a particular major or academic concentration:

Employers look for candidates with a bachelor's degree, often preferring those with a major in communications, journalism, or English. Some technical writing jobs may require both experience and either a degree or knowledge in a specialized field—for example, engineering, medicine, or one of the sciences; others have broader requirements, such as a background in liberal arts. Knowledge of a second language is helpful for some positions. Experience in Web design and computer graphics also is helpful, because of the growing use of online technical documentation.

*Id.* Because the *Handbook* indicates that entry into the technical writer occupation does not normally require a degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation.

The AAO will now discuss the expert opinion letter from [REDACTED] submitted by counsel on appeal. In the letter, [REDACTED] attests that the duties of the proffered position are specialized and therefore a bachelor's degree in technical communication or a related area, or the equivalent, is the normal minimum requirement for the proffered position. [REDACTED] does not list the reference materials on which he relies as a basis for his conclusion. It appears that [REDACTED] did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by counsel. 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'r 1988).

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<sup>2</sup> A normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

Therefore, the AAO finds that the letter from [REDACTED] does not establish that the proffered position is a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher 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 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).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, as briefly addressed above and for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of 29 advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the information technology development, consulting and services industry. The advertisements provided, however, establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree or the equivalent in a specific specialty. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry. For instance, while some of the advertisements are for positions in the information technology development, consulting and services industry, it appears to be for Fortune 500 and multimillion dollar companies and, therefore, they cannot be found to be parallel positions in similar organizations. As a result, 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.<sup>3</sup>

As such, 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 a bachelor's degree is not required in a specific specialty. Furthermore, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than technical writer positions, as described in the *Handbook*, that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

Next, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. The AAO notes that the petitioner and counsel claim repeatedly that the duties of the technical writer position can only be employed by an individual with at least a bachelor's degree or higher in communications, journalism, English, engineering, business, a related analytic and scientific discipline, or its equivalent in education or work-related experience. While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal

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<sup>3</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just 29 job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar information technology development, consulting and services companies. *See generally* [REDACTED], *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of technical writer for a eight-person information technology development, consulting and services company required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

hiring practices.

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 or its equivalent. Again, relative specialization and complexity have not been developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than technical writer positions that are not usually associated with a degree in a specific specialty.

Therefore, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO does not need to examine the issue of the beneficiary's qualifications because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the evaluation from [REDACTED], together with the letter from [REDACTED] does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Specifically, the letter from the University of Maryland does not establish that [REDACTED] has the authority to grant credit for training and/or work experience, which is a requirement under the regulation. As such, the evaluation does not meet the standard of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. § 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.