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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: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 02 2011

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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,

*Michael F. Kelly*  
for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The director of the Vermont 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 be denied.

The petitioner claims to be an import and export corporation with three employees. It seeks to employ the beneficiary as a marketing analyst 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 proffered position is not 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 director's RFE; (3) the director's denial letter; and (4) Form I-290B with the petitioner's supporting documentation. The AAO reviewed the record in its entirety before reaching 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 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 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 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 (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.

The petitioner states that it is seeking the beneficiary's services as a marketing analyst. In a March 20, 2009 letter on the letterhead of a company called [REDACTED] located in the country of Colombia, the [REDACTED] who is also the President of the petitioning entity, stated that the petitioner is a branch corporation [REDACTED] which manufactures sweet cookies in Colombia. According to this letter [REDACTED] exports these cookies to other countries and uses the petitioner to operate its businesses. Although the petitioner is located in [REDACTED] the proffered worksite is at the petitioner's address [REDACTED] the letter

from [REDACTED] states, “[b]ecause of lower costs, and immediate response to market requirements, the corporation considers necessary to have a [sic] people based in Miami attending these matters.”

The petitioner also submitted a job description for the beneficiary for the position title of [REDACTED]. On the marketing analyst side, the proffered duties include contacting purchasing agents and introducing the products of [REDACTED] as well as prepare and send reports to [REDACTED]. On the sales assistant side, the proffered duties include coordinating customer relations with [REDACTED], monitoring shipments, reporting any problems, and sending all sales reports to [REDACTED]. The petitioner did not state its minimum requirements for the proffered position.

The documentation submitted by the petitioner included a copy of the beneficiary’s Bachelor of Science diploma from Nova Southeastern University in Florida. The diploma does not state the field in which the beneficiary obtained his degree, although the beneficiary’s resume indicates that this degree is in business administration.

The Form I-129 indicates that the beneficiary will work at the petitioner’s address in Orlando, FL and the Labor Condition Application was filed for the beneficiary to work in Orlando, FL as a marketing analyst.

On April 15, 2009, the director issued an RFE requesting additional evidence that the proffered position is a specialty occupation. The director also asked the petitioner to clarify the location of proffered employment and to provide documentation to demonstrate that the petitioner’s business is bona fide.

The petitioner responded as follows, “It is not necessary that the candidate be a Business Administration graduate. It may be any profession graduate with good experience in the products we are selling.”

Regarding the proffered worksite, the petitioner stated as follows:

It may be possible that we made a mistake informing that Miami as the labor place. Today the company has it’s [sic] headquarters at [address in Orlando, FL listed in the Form I-129] and for some time the employee is going to have this address as the center of activities. We have an [sic] important work to be done in this city, Tampa, Jacksonville, Miami and it is easy and cheap to move from there to any city in the U.S.A. or Central America.

The job could be done in a virtual office more than in a real office. The employee must travel frequently. This way, the main address will be just a place to receive documents and official notifications.

In other words, the beneficiary more likely than not would not work at the location stated in the Form I-129 for the duration of the petition and, moreover, would most likely work at other locations not listed in the LCA.

The petitioner also provided the following information regarding its business:

[REDACTED] is a partnership, owned by the family of [the President of the petitioning entity]. . . .

[The President of the petitioning entity] is the manager and member of [the] board [of [REDACTED]].

[The petitioner] is a corporation established in [1998] according to Florida Laws, owned by [REDACTED]. It is the center for marketing and sales contacts in the U.S. . . .

[The petitioner] was managed by [the President of the petitioning entity] from [2000 to 2006]. Supported by a H1B visa [sic]. Since [2006] he lives in Colombia.

[The petitioner] doesn't have warehouses for storage of products. It just makes the connection with customers, sales, and suppliers for [REDACTED].

[The petitioner] doesn't have local sales to traders, supermarkets and doesn't retail.

The entire product sold to customers in the U.S.A., Central America, and Venezuela is invoiced and delivered by [REDACTED].

Additionally, the petitioner submitted a copy of its real estate tax bill, which indicates that the petitioning entity is located at a residential address that belongs to the petitioner's President and two other individuals.

The director denied the petition on May 29, 2009.

On appeal, the petitioner states that it wishes to hire the beneficiary in the proffered position in order to replace its former marketing analyst who was employed in H-1B status and resigned in 2008. The petitioner further states that the beneficiary worked for its parent company, [REDACTED] for five years and so gained specialized experience in the business area of WAFER S.A.'s cookies.

Additionally, the petitioner explains:

It is not necessary the candidate be a Business Administrator to do this work. The candidate may be another technical or financial BS, because it is necessary to have academic training to do several activities related to the work he will develop. So, it is absolutely necessary for us, to have experience in the business we have. Other way [sic], we will have to train him in our business and it will take time. This is the reason because of [sic] we offered the position to the employee of our main corporation, [REDACTED] addressed in Colombia.

The duties he will be responsible for are specific and require competitive knowledge on the business on which he has been exposed for the past five years in [REDACTED]. This exposure has given him ample knowledge on the industry and trading, making him our best candidate to this position.

Someone, that has not been exposed to the environment in our corporation and does not have all the technical production knowledge, marketing approach, and training conditions, will not represent a great asset to our corporation. We need someone that already knows our system, which is familiar with the way the sweet cookies business and we operate, and knows our customers and wholesalers policies.

In other words, the petitioner requires that the person who fills this position have knowledge of the petitioner's business, but does not require that the person who fills this position have at least a bachelor's degree or the equivalent experience in a specific specialty. Therefore, the proffered position is not a specialty occupation as that term is defined in 8 C.F.R. § 214.2(h)(4)(ii).

The petitioner never provided sufficient details regarding the proffered duties for the AAO to determine what the beneficiary will actually be doing as the position description was vague and generic and the petitioner submitted no supporting documentation to demonstrate what the beneficiary would actually be doing, even though the petitioner claimed to have employed someone in the proffered position previously. Additionally, the petitioner described the proffered duties as being those of a sales assistant in addition to a market analyst. However, even if the petitioner could demonstrate that the proffered position is that of a market research analyst, the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2010-2011 edition, does not indicate that entry into positions in that occupation normally requires at least a bachelor's degree, or the equivalent, in a specific specialty.

While the *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many market and survey research jobs, it does not indicate that the degrees held by such workers must be in a specific specialty that is directly related to market research, as would be required for the occupational category to be recognized as a specialty occupation. This is evident in the range of qualifying degrees indicated in the Significant Points section that introduces the *Handbook's* chapter "Market and Survey Researchers," which states: "Market and survey researchers can enter the occupation with a bachelor's degree, but those with a master's or Ph.D. in marketing or a social science should enjoy the best opportunities."

That the *Handbook* does not indicate that market research analyst 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 "Market and Survey Researchers," which does not specify a particular major or academic concentration:

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

In addition to completing courses in business, marketing, and consumer behavior,

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

Because the *Handbook* indicates that entry into the market research analyst occupation does not normally require a degree in a specific specialty, which is in accordance with the petitioner's example of not requiring at least a bachelor's degree or equivalent in a specific specialty for the proffered position, the *Handbook* does not support the proffered position as being 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 closely related to the position's duties, 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.

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 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. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must 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 corollary 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.

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. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) 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 189, 2007 WL 1228792 (C.A. 1 (Puerto Rico) 2007).

The petitioner has also not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree.” The petitioner did not submit any documentation to evidence that the proffered position requires at least a bachelor’s degree or the equivalent in a specific specialty. Indeed, the petitioner specifically stated that the proffered position does not require at least a bachelor’s degree or the equivalent in a specific specialty.

Although the petitioner claimed that it previously hired someone in the proffered position, the petitioner did not submit supporting evidence that this worker performed the same duties proffered here or that this worker has at least a bachelor’s degree or the equivalent in a specific specialty. 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)). As the record has not established a prior history of 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).

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. The proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than market-research-analyst positions that are not usually associated with a degree in a specific specialty.

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).

Beyond the decision of the director, the AAO also finds that the petitioner failed to establish that the LCA corresponds to the petition by encompassing all of the work locations and related wage requirements for the beneficiary’s full employment period. For this additional reason, the petition cannot be approved.

In pertinent part, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B) states:

The petitioner shall submit the following with an H-1B petition involving a specialty occupation: (1) A certification from the Secretary of Labor that the petitioner has filed a labor condition application . . . .

The regulation at 8 C.F.R. § 103.2(b)(1) states, in pertinent part:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions.

In addition, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1), states, as part of the general requirements for petitions involving a specialty occupation, that:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

Further, the regulation at 8 C.F.R. § 214.2(h)(2)(E), which states:

*Amended or new petition.* The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H-1C, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination. In the case of an H-1B petition, this requirement includes a new labor condition application.

It is self-evident that a change in the location of a beneficiary's work to a geographical area not covered by the LCA filed with the Form I-129 is a material change in the terms and conditions of employment. Because work location is critical to the petitioner's wage rate obligations, the change deprives the petition of an LCA supporting the period of work to be performed at the new location and at what will likely be a new wage rate.

Moreover, while DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the*

occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

(Emphasis added).

The LCA and Form I-129 in this matter, which indicate the proffered position's location [REDACTED] do not correspond with the petitioner's statement in response to the RFE, which indicates that the beneficiary will travel frequently for his work or the evidence that the petitioner is located in a private home. In light of the fact that the record of proceeding indicates that the beneficiary will likely work at locations not identified in the Form I-129 and the LCA filed with it, USCIS cannot ascertain that this LCA actually supports the H-1B petition. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Also beyond the decision of the director, the AAO finds that the petition must be denied for the additional reason that it was filed without an itinerary of the dates and locations where the beneficiary would work, as required by the regulation at 8 C.F.R. § 214.2(h)(2)(i)(B), which states, in pertinent part:

*Service or training in more than one location.* A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.

The language of the regulation, which appears under the subheading "Filing of petitions" and uses the mandatory "must," indicates that an itinerary is material and required initial evidence for a petition involving employment at multiple locations, and that such a petition may not be approved for any employment for which there is not submitted, at the time of the petition's filing, at least the employment dates and locations. USCIS may in its discretion deny an application or petition for lack of initial evidence. 8 C.F.R. § 103.2(b)(8)(ii). The AAO hereby exercises that discretion and denies the petition for this additional reason.

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 petitioner did not submit copies of the beneficiary's transcripts evidencing the field in which the beneficiary obtained his U.S. bachelor's degree. As such, since evidence was not presented that the beneficiary has at least a bachelor's degree or the equivalent in a specific specialty, 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. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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