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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: CALIFORNIA 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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

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

On the Form I-129 visa petition the petitioner stated that it is an online retailer. To employ the beneficiary in what it designates as an “editorial advertising specialist” 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 proceedings, which includes: (1) the petitioner’s Form I-129 and the supporting documentation filed with it; (2) the service center’s request for additional evidence (RFE); (3) the response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B and counsel’s brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which (1) requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which (2) requires the

attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States."

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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

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

With the petition, counsel provided a letter, dated March 31, 2009, from the petitioner's executive vice president. That letter states:

[The beneficiary's] duties will include drafting company news letters with specific descriptions of all optical products distributed and offered for sale by [the petitioner;] preparing customer proposals with specific description of products requested[;] preparing marketing materials for products in various media including newspaper, radio, TV[;] and preparing description[s] of products for the company's web site.

The petitioner's executive vice president also stated that the position requires "a Bachelor [sic] degree in Linguistics or related field . . . ." He did not explain how he reached that conclusion, that is, he did not explain why any of those duties require a bachelor's degree in linguistics.

Because the evidence submitted did not demonstrate that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty and is, therefore, a position in a specialty occupation, the service center, on April 11, 2009, issued a RFE in this matter. The service center requested, *inter alia*, that the petitioner "explain why the work to be performed requires the services of a person who has a college degree or its equivalent in the occupational field." The service center also noted that the petitioner is obliged to show that the proffered position qualifies as a specialty occupation position pursuant to one of the four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response, counsel provided her own letter, dated May 11, 2009, and evidence pertinent to other employees of the petitioner, including diplomas. Counsel stated that each of those other employees also holds the position of editorial advertising specialist with the petitioner.

Counsel provided no evidence, however, that those other employees are in the same position as that proposed for the beneficiary. If they are not, then, of course, whatever degrees the petitioner may have required for their positions is irrelevant to whether the instant position requires a bachelor's degree in linguistics. If those other employees are, as counsel asserted, employed as editorial advertising specialists, then, considering the very limited duties of the position, this would raise the issue of how many people the petitioner could possibly employ in such positions.

In any event, three of the diplomas provided indicate that [redacted] and [redacted] were awarded Bachelor of Arts degrees, but do not specify their major courses of study. Two diplomas provided show that [redacted] has a Bachelor's Degree in Liberal Arts and Sciences and a Master of Arts in Teaching. None of those diplomas are evidence that the proffered position requires a bachelor's degree in linguistics.

Counsel also provided vacancy announcements printed from popular job search web sites. They were apparently submitted to support the proposition that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)

because 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.

One of those vacancy announcements is for a Marketing Communications Specialist and was placed by [REDACTED], which stated that it develops "property management systems for owners and managers." [REDACTED] is clearly in an industry different from that of the petitioner. That announcement states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another vacancy announcement was placed [REDACTED], which described itself as a "subscription-based medical information resource," for an Editorial Assistant. Although it states that the position requires a bachelor's degree, it does not indicate that the degree must be in any specific specialty.

Another announcement was placed [REDACTED] for a position referred to variously as an Editorial Assistant and as an Editorial Administrator. This advertiser's name suggests that it is in a different industry. That announcement states, "A Bachelors Degree in a communications-related discipline . . . is essential." The AAO notes that a bachelor's degree in a communications-related discipline does not necessarily describe a degree in a specific specialty. Further, whether linguistics should be considered a communications-related discipline is unclear.

Another announcement was placed by an unidentified small publishing company in Wrentham, Massachusetts for an editorial assistant. That announcement 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 an employment agency [REDACTED], which described itself as a worldwide healthcare communications network. The announcement indicates that [REDACTED] is in a different industry from that of the petitioner. The vacancy announcement is for an Editor and states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another announcement was placed [REDACTED], and is for a Marketing Specialist. It states that Luminus is "the worldwide leader in ultra-high power and brightness LEDs." That announcement indicates that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another announcement was placed for an Advertising Operations Specialist by an employment agency for an unidentified employer in New York, New York. The industry of that unidentified employer is unknown to the AAO. That announcement states, "Bachelor's degree preferred . . ." It does not indicate that a bachelor's degree is a minimum requirement for the position or that any specific specialty is preferred.

Another announcement was placed by an employment agency for an Online Advertising Specialist to work for a “well-established International company with operations in the Northeast.” That announcement indicates that the position requires a bachelor’s degree, but not that the degree must be in any specific specialty.

Another announcement was placed for [REDACTED], which described itself as a leader in data management and data protection software. That announcement states that the position requires a bachelor’s degree, but not that the degree must be in any specific specialty.

Counsel also submitted copies of vacancy announcements taken from classified newspaper advertising. Those announcements are for an Advertising & Promotions Manager position with an unidentified company or other organization. As to the educational requirements, those announcement state, “MS in Philology, cons in English language & literature . . . .”

The AAO notes that none of those announcements have been shown to be for a position in the petitioner’s industry that is parallel to the position proffered in this case. Further, none of them state that the position offered requires a minimum of a bachelor’s degree or the equivalent in linguistics. Those vacancy announcements are not evidence that the proffered position requires a minimum of a bachelor’s degree or the equivalent in linguistics pursuant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In a letter dated May 1, 2009, the petitioner’s executive vice president stated, “As this position requires excellent writing, composition and analytical skills, Bachelor’s degree in Linguistics or related field is required.”

The director denied the visa petition on May 26, 2009 finding, as was noted above, that the petitioner had failed to demonstrate that the proffered position qualifies as a specialty occupation. In that decision, the director found that the proffered position would be correctly classified as a marketing manager position.

On appeal, the petitioner provided additional copies of documents already provided and additional vacancy announcements. Again, none of those vacancy announcements were demonstrated to be for positions in the petitioner’s industry for a parallel position that requires a minimum of a bachelor’s degree or the equivalent in linguistics.

In the appeal brief, counsel again asserted that the petitioner employs four people in the proffered position all of whom have “Bachelor’s degree[s] in the arts,” and that this suggests that the proffered position is in a specialty occupation. Counsel asserted that various aspects of the evidence demonstrate that the proffered position qualifies as a specialty occupation pursuant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO recognizes the U.S. Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety

of occupations that it addresses.<sup>1</sup> The *Handbook* describes the duties of marketing manager positions as follows:

Marketing managers work with advertising and promotion managers to promote the firm's or organization's products and services. With the help of lower level managers, including *product development managers* and *market research managers*, marketing managers estimate the demand for products and services offered by the firm and its competitors and identify potential markets for the firm's products. Marketing managers also develop pricing strategies to help firms maximize profits and market share while ensuring that the firms' customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and they oversee product development.

The AAO does not concur with the director that the duties of the proffered position suggest that it is a position for a marketing manager. The proffered position's duties, drafting the company newsletter, preparing descriptions of the petitioner's stock in trade, and writing advertising copy to be published in newspapers and aired on television and radio, does not include the authority of a marketing manager to monitor trends that indicate the need for new products, oversee product development, estimate demand for products and services, and develop pricing strategies. Rather, the main duties of the proffered position, as described in the evidence, are to write and edit copy for publication in various media.

The *Handbook* states the duties of authors, writers, and editors as follows:

*Authors, writers and editors* produce a wide variety of written materials in an increasing number of ways. They develop content using any number of multimedia formats that can be read, listened to, or viewed onscreen. Although many people write as part of their primary job, or on online chats or blogs, only writers and editors who are paid to primarily write or edit are included in this occupation.

The AAO finds that the duties of the proffered position correspond very closely to the *Handbook* description of the duties of authors, writers, and editors. As to the education required for such positions, the *Handbook* states:

A bachelor's degree or higher is typically needed for a job as an author, writer, or editor. Because writing skills are essential in this occupation, many employers like to hire people with degrees in communications, journalism, or English, but those with other backgrounds and who can demonstrate good writing skills may also find jobs as writers . . . .

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online, accessed November 11, 2010.

That passage does not indicate that a bachelor's degree is a minimum requirement for a position as a writer and, even for those writer positions that do require such a degree, the *Handbook* does not suggest that a degree in a specific specialty, such as linguistics, for instance, is required. The petitioner has not, therefore, demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As was noted above, none of the vacancy announcements submitted pertains to an organization in the petitioner's industry seeking to fill a position parallel to the proffered position that requires a degree in linguistics. No other evidence was provided on that point. The petitioner has not, therefore, demonstrated that a requirement of a minimum of a bachelor's degree in that specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Counsel asserted that four other people who work for the petitioner are employed in the same position as that proffered in the instant case, editorial advertising specialist. The evidence provided pertinent to those other employees, however, does not establish that they are employed in that position and does not establish that they have bachelor's or higher degrees in linguistics. The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position who had a minimum of a bachelor's degree or the equivalent in linguistics, and certainly does not establish that most or all of the people hired into that position have had linguistics degrees. The petitioner has not established that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner may show that the proffered position qualifies as a specialty occupation position by showing that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Pursuant to the second clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner may show that the position qualifies as a specialty occupation by showing that its particular position is so complex or unique that it can be performed only by an individual with a degree.

In an apparent attempt to address those criteria, the petitioner's executive vice president stated, in his May 1, 2009 letter, "As this position requires excellent writing, composition and analytical skills, Bachelor's degree in Linguistics or related field is required."

In fact, the petitioner has not established that a degree in linguistics would cause one to be skilled in writing and composition, or in analysis, and that its study would cause one to be uniquely suited to writing and analysis, to the exclusion of graduates in other disciplines, or even to the exclusion of those who have not attended college. In any event, the record of proceeding does not establish that

performance of the proffered position requires the theoretical and practical application of a body of highly specialized knowledge in linguistics.

As reflected in this decision's earlier quotations from letters of the petitioner's executive vice president, the petitioner has not demonstrated that the proffered position or its duties are so complex, unique, or specialized that they can only be performed by a person with a minimum of a bachelor's degree in a specific specialty or the equivalent or that performance of the duties is usually associated with a minimum of a bachelor's degree in a specific specialty or the equivalent. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) or the criteria of the second clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 argument submitted on appeal has not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

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

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