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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:

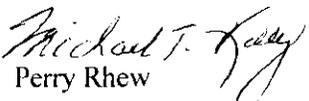


INSTRUCTIONS:

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, 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, in the section provided for the petitioner to identify its type of business, the petitioner entered "Maritime," without elaboration. The petitioner further stated that it has two employees. To employ the beneficiary in what it designates as a marketing analyst position, the petitioner endeavors to classify him 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.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's 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 in support of the appeal.

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

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

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

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

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

education, business specialties, accounting, law, theology, and the arts, and which (2) requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.”

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

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

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

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

requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the visa petition, counsel provided a letter, dated March 15, 2009, from the petitioner's owner. That letter describes the duties of the proffered position as follows:

- Participate in the development and supervise the implementation of marketing strategies and programs to achieve sales and profit objectives[;]
- Supervise the development and implementation of marketing plans which will leverage current product strengths and opportunities in the market;
- Collaborate with other departments (business development, new products, etc.) [t]o integrate improved and/or new products into marketing strategies and programs;
- Assess and evaluate the management of all sales objectives and identify potential problems and opportunities and make recommendations for the appropriate course of action;
- Develop systems for the periodic review of marginally profitable items, monitor performance, and make recommendations for justifiable deletion of certain products;
- Supervise the development and production of appropriate advertising and promotional materials in accordance with established budgetary standards;
- Evaluate the success of marketing and sales programs with division management and recommend adjustments and changes to achieve desired results'
- Review and evaluate competitive products, programs and apparent marketing strategies;
- Develop and recommend programs which will respond to current and projected competitive action;
- Attend product development project teams and provide input and guidance to ensure development projects are designed to meet or exceed customer needs at Anacaknch.<sup>1</sup>
- *Participating in and attending primary market trade shows.* These shows are where we can promote our products, meet others in the same field to develop business relationships, define trends in the field, determine competitive pricing and thrive.

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<sup>1</sup> The reference to Anacaknch is not explained anywhere in the record.

- *Communicating with related markets, as well as manufacturers.* The product lines that we develop must be manufactured in a cost-effective manner to compete in the marketplace. The Marketing Analyst must communicate directly with markets here in the United States and overseas in order to successfully market our product lines and negotiate pricing with these markets, which requires a detailed knowledge of marketing and of the economics involved in the manufacturing process.
- *Determining market prices in the United States and abroad.* In order to know the amount to expend in marketing and selling a product, the Marketing Analyst must be familiar with world markets, currency fluctuations and quota schemes. In order to market most cost-effectively, a thorough knowledge of business markets and economics is necessary.
- *Choosing and deciding on upcoming projects resulting from market research.* The Marketing Analyst must review the market research performed in order to determine future product lines. The research entails traveling to shows and analyzing the products and costs to carry and market similar products cost-effectively and gaining a comprehensive knowledge in the maritime trends of the future.

The petitioner's owner stated that the proffered position requires a minimum of a bachelor's degree or the equivalent in business or marketing.

Because it found that the evidence submitted with the visa petition did not demonstrate that it is approvable, the service center, on April 20, 2009, issued a RFE in this matter. The service center requested, *inter alia*, evidence that the proffered position qualifies as a specialty occupation, including evidence that the petitioner hires only individuals with minimum of a bachelor's degree or the equivalent in a specific specialty to work in the proffered position.

In response, counsel provided a letter, dated May 12, 2009, from the petitioner's owner. The petitioner's owner stated that the petitioner "(has) been able to contemplate expanding our sales base to an international level," and requires a marketing analyst with knowledge of economics and inventory prognosis, and has "the ability design business and market programs which will enhance our profile into this niche industry."

The petitioner's owner further stated:

We are familiar with other firms in the maritime industry, and those with aspirations to sell in the international market, or those that are already in that market, [and] all have professional level individuals who participate, formulate and strategize marketing concepts and analysis in order to assist the corporations in enhancing and increasing their business.

The petitioner's owner continued that without a professional marketing analyst "we do not think we could remain competitive in this very tight global economic downturn." He further stated:

For the reasons set out above, we deem it an absolute business necessity to employ an individual in the position of marketing analyst who has *a degree in either business or marketing*. And who can be savvy about the implications of competing on the internet, against larger and more established and entrenched businesses.

[Emphasis supplied.]

The director denied the visa petition on May 20, 2009 finding, as was noted above, that the proffered position does not qualify as a position in a specialty occupation.

On appeal, counsel submitted a brief. The paragraphs of that brief are numbered. Part of that brief appears to be missing from the record. The portion missing includes paragraphs six through 13, and part of paragraph 14. The AAO will adjudicate this matter based on the record as currently constituted.

In the brief submitted on appeal, counsel asserted that the duties described are clearly the duties of a marketing analyst position, and therefore identify the proffered position as such a position.

The AAO observes that the petitioner's owner stated that the educational requirements of the proffered position may be satisfied by a minimum of a bachelor's degree in either business or marketing. This assertion, in itself, demonstrates that the proffered position is not a position in a specialty occupation.

This is because a requirement of a bachelor's degree in business administration without a specific academic concentration 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 correlation 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 (Comm. 1988). 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. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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 139, 147 (1st Cir. 2007).

The petitioner's owner's assertion that the educational requirement of the proffered position may be satisfied by a bachelor's degree in business, without further specification, demonstrates that it does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, and does not, therefore, qualify as a position in a specialty occupation. For this reason alone, the appeal must be

dismissed and the visa petition must be denied. The AAO will, however, continue its analysis of the specialty occupation issue.

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>2</sup> The *Handbook* discusses market research analyst positions in the section entitled Market and Survey Researchers.

The *Handbook* states the duties of such positions as follows:

*Market and survey researchers* gather information about what people think. Market research analysts help companies understand what types of products people want, determine who will buy them and at what price. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze data on past sales to predict future sales.

Market research analysts devise methods and procedures for obtaining the data they need by designing surveys to assess consumer preferences. While a majority of surveys are conducted through the Internet and telephone, other methods may include focus group discussions, mail responses, or setting up booths in public places, such as shopping malls, for example. Trained interviewers usually conduct the surveys under a market research analyst's direction.

Market opinion research has contributed greatly to a higher standard of living as most products and services consumers purchase are available with the aid of market research. By making recommendations to their client or employer, market research analysts provide companies with vital information to help them make decisions on the promotion, distribution, and design of products or services. For example, child proof closures on medicine bottles exist because research helped define the most workable design; and the growing variety of ready to cook meals, such as microwaveable soups and prepackaged meat products, exist because of increasing public demand for fast and convenient meals. The information also may be used to determine whether the company should add new lines of merchandise, open new branches, or otherwise diversify the company's operations. Market research analysts also help develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways based on their knowledge of the consumer being targeted.

Survey researchers also gather information about people and their opinions, but these workers focus exclusively on designing and conducting surveys. They work for a variety of clients—such as corporations, government agencies, political candidates—gathering

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<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online, accessed January 24, 2011.

information to help make fiscal or policy decisions, measure the effectiveness of those decisions, and improve customer satisfaction. Survey researchers may conduct opinion research to determine public attitudes on various issues; the research results may help political or business leaders measure public support for their electoral prospects or social policies. Like market research analysts, survey researchers may use a variety of mediums to conduct surveys, such as the Internet, telephone interviews, or questionnaires sent through the mail. They also may supervise interviewers who conduct surveys in person or over the telephone.

Survey researchers design surveys in many different formats, depending upon the scope of their research and the method of collection. Interview surveys, for example, are common because they can increase participation rates. Survey researchers may consult with economists, statisticians, market research analysts, or other data users in order to design surveys. They also may present survey results to clients.

The AAO finds that the duties attributed to the proffered position generally comport with the duties of a market and survey researcher as described in the *Handbook*. The *Handbook* describes the educational requirements of market and survey researcher positions as follows:

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.

While in college, aspiring market and survey researchers should gain experience gathering and analyzing data, conducting interviews or surveys, and writing reports on their findings. This experience can prove invaluable toward obtaining a full-time position in the field, because much of the work may center on these duties. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or marketing research firms prior to graduation.

That a bachelor's degree is the minimum requirement for many market and survey researcher positions and a master's degree is required for others does not demonstrate that all such positions require a minimum of a bachelor's degree, or that a bachelor's degree in a specific specialty is normally the minimum requirement for those jobs that require a bachelor's degree. Further,

although the *Handbook* excerpt above makes clear that prospective market and survey researchers should take classes in business, marketing, consumer behavior, economics, psychology, and sociology, and that classes in mathematics, statistics, sampling theory and survey design, and computer science are also extremely helpful, it does not state, nor even suggest, that those classes must be taken as part of a curriculum in a specific specialty. It does not suggest that market and survey researcher positions constitute an occupational class that requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner, therefore, has not 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).

The petitioner's president stated that all companies of which he is aware that are in the petitioner's industry and are either in the international market or aspire to be use the services of a professional in a position parallel to the proffered position. The petitioner's owner provided no evidence, however, to support that assertion. The petitioner provided no evidence pertinent to the recruitment and hiring practices of other companies in its industry.

Although the statements by the petitioner's president are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)).

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, 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).

Next, the AAO finds that the petitioner failed to satisfy the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), by "show[ing] that the particular position is so complex or unique that it can be performed only by an individual with a degree."

The petitioner describes the proffered position in terms of generalized and generic functions that appear consistent with the market research analyst occupational classification as described in the *Handbook*. However, the *Handbook* indicates that the spectrum of market research analyst positions includes jobs that are performed by persons without a degree, or the equivalent, in a specific specialty, and the record of proceeding lacks evidence that demonstrates that uniqueness or complexity inherent to the proffered position distinguishes it from market research analyst positions that can be performed by persons without a bachelor's degree, or the equivalent, in a specific specialty.

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position. Further, the petitioner's owner's own characterization of the proffered position's educational requirements indicates that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, as he admitted that the educational requirement of the proffered position may be satisfied with an undifferentiated bachelor's degree in business. The petitioner has not, therefore demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

As was noted above, the duties of the proffered position, as described by the petitioner's president, fit neatly into the description of the duties of a market and survey researcher position as described in the *Handbook*. There is nothing to suggest that the duties of the proffered position are more complex or demanding than the positions of more ordinary market and survey researcher positions, and the *Handbook* indicates that market and survey researcher positions do not generally require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Finally, the AAO finds that, while the record of proceeding indicates that the beneficiary would be employed in the occupation of market research analyst, neither the descriptions of the duties that the petitioner ascribes to the proffered position, nor any documentary evidence in the record of proceeding, establishes that their performance requires the theoretical and practical application of any highly specialized body of knowledge that is usually associated with the attainment of at least a bachelor's degree, or the equivalent, in any specific specialty. Accordingly, the petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director was correct in his determination that the record before him 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.