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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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[redacted]

Date: NOV 14 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner is a healthcare staffing registry, established in with 50 plus employees, and a gross annual income of over $1 million when the petition was filed. It seeks to employ the beneficiary as a human resources specialist pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition, concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

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

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

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

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

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

> An occupation which requires [1] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [2] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

> *(1)* A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

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

In this matter, the petitioner seeks the beneficiary's services as a human resources specialist. The petitioner, in its June 8, 2009 letter in support of the petition, described the duties of the proffered position as:

> Seek out, interview and select applicants; fill existing openings with qualified applicants and conduct personnel briefings; plan and develop recruitment

> strategies to attract qualified applicants; determine competitive wage rates and recommend adjustments; develop means and methods to evaluate performance and conduct performance evaluations/surveys; assess and evaluate performance of personnel and address complaints and work performance problems; plan and develop staffing policies and procedures; project yearly recruitment expenditures and prepare budget for personnel operations; develop and maintain relationships with company clients to determine personnel requirements and growth projections; prepare proposals and quotations for company clients and assist in negotiating staffing agreements.

The petitioner stated that the above described position required the education and training of a person with a bachelor's degree in management, human resources, business administration or a related field. The petitioner referenced the Department of Labor's *Occupational Outlook Handbook's* (*Handbook*) chapter on the Human Resources Specialist occupation and provided copies of job advertisements showing that a bachelor's degree is sufficient in most cases for the position of human resources specialist. A review of the ten advertisements submitted shows the advertising organizations required a general bachelor's or four-year degree to perform the duties of the advertised positions.

The petitioner indicated that to effectively perform the duties of the position, the successful applicant "would require (i) knowledge of principles and procedures for personnel recruitment, selection and compensation; and (ii) knowledge of business and management principles involved in strategic planning, resource allocation and coordination of people and resources." The petitioner stated that the prospective employee in the proffered position must have a bachelor's degree in the field of management, human resources, business administration or in a related field. The petitioner noted that the beneficiary had earned a foreign bachelor's of science degree in commerce as well as a bachelor's of science degree in nursing.

On August 13, 2009, the director issued an RFE requesting additional evidence that the proffered position is a specialty occupation, including a more detailed job description and any evidence demonstrating factors that distinguished the proffered position from those positions that did not require a degree in a specific field of study. The RFE also requested additional information regarding the nature of the petitioner's business.

In response to the RFE, the petitioner again referenced the *Handbook* to support its assertion that the human resources specialist occupational category is a specialty occupation. The petitioner also provided an additional 30 advertisements to establish an industry norm of requiring a bachelor's degree in human resources management, business administration, or management for the position of human resources specialist. A review of the advertisements finds that some of the advertisers indicated that a bachelor's degree in human resources or business administration or a related field was required while others noted their preference for applicants with a bachelor's degree in human resources or business administration. Some advertisements noted that degrees in marketing or education were acceptable majors and others indicated that having the "equivalent experience" or having a general degree with emphasis in human resources or business were acceptable for positions with titles similar to that of a human resources specialist.

The petitioner also added that as it provided qualified healthcare workers to individuals, facilities and hospitals and each client required a worker with a unique set of skills, knowledge, and abilities it was essential to correctly and accurately match its worker to each client and its needs. The petitioner asserted that its human resources specialist's job duties are unique and specialized and complex and can only be performed by an individual with knowledge, skills and abilities attained by having completed specific undergraduate coursework. The petitioner summarized the job duties of the position into five categories and related the job functions to particular courses completed by the beneficiary in obtaining her undergraduate degree in business administration in management. The petitioner also provided course curriculums for a bachelor's of science in management – human resources management , a bachelor's of science in management, major in human resources management , and a bachelor's of science/business administration, human resources management . The petitioner contended that the undergraduate coursework for these majors and the beneficiary's coursework for her degree shared the same or similar core subjects in human resources management, personnel management, marketing and business.

The director denied the petition on October 19, 2009.

On appeal, counsel for the petitioner asserts that a correct reading of the *Handbook's* chapter on human resources specialists establishes that a baccalaureate or higher degree is normally the minimum requirement for entry into the particular position. Counsel contends that the *Handbook's* indication that many employers seek college graduates who have majored in human resources, human resources administration, or industrial and labor relations for positions in human resources, training, and labor relations management is sufficient to establish that the proffered position is a specialty occupation. Counsel notes that the advertisements submitted confirm that employers do require completion of undergraduate coursework in human resources management, business administration, management or a related field for positions in human resources. Counsel references the petitioner's discussion of the duties of the position and how those duties relate to the beneficiary's specific coursework and implies that the discussion establishes that the duties of the position are specialized and complex and the knowledge required to perform the duties of the position is associated with the attainment of a baccalaureate or higher degree. Counsel takes issue with the director's interpretation and application of the principals involved when establishing an occupation is a specialty occupation.

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

recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The Human Resources Specialist occupational category is addressed in the *Handbook* (2010-2011 online edition) – "Human Resources, Training, and Labor Relations Managers and Specialists."

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

> In filling entry-level jobs, many employers seek college graduates who have majored in human resources, human resources administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.
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> Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business administration, and behavioral sciences is useful.
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> * * *
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> The duties given to entry-level workers will vary, depending on whether the new workers have a degree in human resource management, have completed an internship, or have some other type of human resources-related experience. Entry-level employees commonly learn by performing administrative duties—helping to enter data into computer systems, compiling employee handbooks, researching information for a supervisor, or answering phone calls and handling routine questions. Entry-level workers often enter on-the-job training programs in which they learn how to classify jobs, interview applicants, or administer employee benefits; they then are assigned to specific areas in the human resources department to gain experience. Later, they may advance to supervisory positions, overseeing a major element of the human resources program—compensation or training, for example.
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> * * *
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> Many employers prefer entry-level workers who have gained some experience through an internship or work-study program while in school. Employees in human resources administration and human resources development need the ability to work well with individuals and a commitment to organizational goals. This field demands skills that people may have developed elsewhere—teaching, supervising, and volunteering, among others. Human resources work also offers clerical workers opportunities to advance to more responsible or professional positions. Some positions occasionally are filled by experienced individuals from other backgrounds, including business, government, education, social services administration, and the military.

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

The *Handbook* finds a number of fields of study suitable for entry into the position of human resources specialist. Thus, while many employers may seek college graduates who have majored in human resources, human resources administration, or industrial and labor relations, the *Handbook* does not state that many employers require these specific fields of study for entry into the position of human resources specialist. Rather, as the *Handbook* notes entry-level employees may have degrees in human resource management, may have completed an internship, or may have other types of human resources-related experience. Some have developed the skills necessary for this position by teaching, supervising or volunteering or by advancement from clerical positions. The diversity in the acceptable methods for preparing to work in this position precludes a determination that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the position. As the *Handbook* recognizes a wide spectrum of degrees and experiences for employment as a human resources specialist, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a specific specialty. Accordingly, the AAO finds that the petitioner has not established its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

As stated earlier, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. 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, the petitioner's reliance upon the job vacancy advertisements is misplaced. The advertisements provided at best establish that a bachelor's degree or a bachelor's degree in a general field of field of study is required but not at least a bachelor's degree or the equivalent in a *specific specialty*. In addition, the job postings provided show a range of occupations, from an administrative assistant to a director of human resources. There are few job postings that include sufficient information regarding the duties of the position to establish that the listings are parallel to the petitioner's described position. 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.[1]

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for a human resources specialist, including degrees not in a specific specialty.

Specifically, even though the petitioner claims that the proffered position's duties are so complex and unique that a bachelor's degree in a specific specialty is required, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. The AAO acknowledges the petitioner's comparison of the proffered position's duties to the courses completed by the beneficiary in obtaining a bachelor's degree in commerce from a foreign university that was evaluated as substantially equivalent to a U.S. bachelor's degree in business administration in management; however, it is not the beneficiary's educational credentials that make a position a specialty occupation. Moreover, the beneficiary's degree is in the general field of business administration and although the evaluation notes that her degree is equivalent to a degree in business administration in management, the evaluator does not explain the specific and precise course of study that further

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[1] According to the *Handbook*'s detailed statistics on human resource training, and labor relations managers and specialists, there were approximately 904,900 persons employed in this field in 2008 of which 207,900 persons were employed as employment, recruitment, and placement specialists. *Handbook*, 2010-11 ed., available at http://www.bls.gov/oco/ocos020.htm (last accessed November 2011). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the job postings it provided with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the healthcare staffing industry. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, we observe that the initial ten advertisements provided by the petitioner did not reference a degree in any field but only listed a bachelor's degree as the required or preferred background. However, in response to the RFE, the advertisements provided show that companies prefer or require a bachelor's degree primarily in human resources or business administration. 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 job of human resources specialist for the petitioner's staffing organization 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.

refines the general business degree granted. 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.

While a few diverse courses in business and business management may be beneficial in performing certain duties of a human resources specialist, the petitioner has failed to demonstrate how an established curriculum of such courses elevates the proffered position to a specialty occupation. The AAO acknowledges that a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, however 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).[2] Further, the petitioner's claims in this matter that the duties of the proffered position may be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration is tantamount to an admission that the proffered position is not in fact a specialty occupation. Upon review of the course curriculums from the three colleges provided by the petitioner, these curriculums only further confirm the general nature of a degree in human resources. The petitioner has not provided sufficient information relevant to a detailed course of study leading to a specialty degree and has not then established how such a curriculum is necessary to perform the duties it claims are so complex and unique. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than a human resources specialist position that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

As the record has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

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

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

Id.

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

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

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

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