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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services



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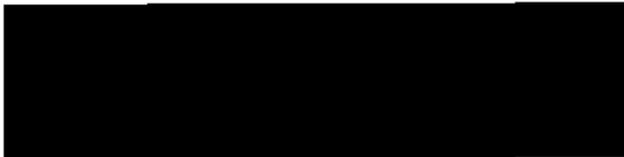
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Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE:

Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the 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 be denied.

The petitioner states that it is a wholesale trade business. It seeks to employ the beneficiary as a financial manager 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 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, with counsel's brief and supporting materials. The AAO reviewed the record in its entirety before reaching its decision.

The primary issue that the AAO will consider 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 [(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 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.

The petitioner claims to have five employees, including the beneficiary, and a gross annual income of over \$4.2 million.¹ In this matter, the petitioner seeks the beneficiary’s services as a financial manager. The initial letter from the petitioner submitted with the petition stated that the beneficiary would: obtain and analyze financial information; analyze the company’s business

¹ The AAO notes that, although the petitioner’s gross income in its 2007 U.S. Corporate Income Tax Return was approximately \$4.2 million, the petitioner’s gross income decreased to approximately \$3.6 million in 2008.

practices, goods, and services; prepare forecasts of financial activity and risk assessment for businesses; prepare reports; make recommendations for risk management; and monitor and make recommendations for financial activities.

The petitioner also stated that it requires its financial manager to have a bachelor's degree in finance, accounting, economics, or business administration. The petitioner submitted a copy of an advertisement it ran for the proffered position, which indicated that a bachelor's degree is required. However, the advertisement does not state that the bachelor's degree must be in a specific specialty.

The petitioner submitted copies of the beneficiary's credentials along with a credential evaluation stating that the beneficiary's education is equivalent to a bachelor's degree in economics from an accredited college or university in the United States.

On May 28, 2009, the director issued an RFE requesting additional evidence that the proffered position is a specialty occupation, including a more detailed job description and an organizational chart if the beneficiary will supervise or direct others. The RFE also requested additional information regarding the petitioner's business.

In response to the RFE, counsel responded that the beneficiary would spend 65% of her time analyzing financial information as well as creating policies and plans to meet objectives and resolve inefficiencies, 20% of her time preparing financial forecasts, 10% of her time resolving financial problems, and 5% of her time preparing reports.

Counsel further stated:

Her level of responsibility is very high. She is not a low level employee. She is the highest level employee under the president. The company had 4.2 million dollars in revenue in 2007 and 3.6 million dollars in revenue in 2008. The company currently has five employees. The company is counting on the financial manager to remain competitive in the industry, to keep costs low, to keep efficiency high, to accurately assess the industry, to competently resolve financial problems and competently plan financial activities. No one else in the business has the educational or experience background to do the work and if the work is not done well the sales and profits of the company will suffer.

She works 40 hours per week. She directly supervises [the accountant]. In addition she has authority over the sales manager regarding issues concerning with costs, expenses, planning and economic efficiency.

The minimum education, training and experience necessary to do the job is a bachelor's degree in economics.

The AAO notes that counsel's statements that the beneficiary works 40 hours per week and that the position requires a bachelor's degree in economics contradicts the petitioner's statements that the position would be from 20-40 hours per week and requires a bachelor's degree in finance,

accounting, economics, or business administration. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted an organizational chart that indicated the beneficiary will head the petitioner's accounting department, including the supervision of the petitioner's accountant.

To the extent that the proposed duties are described in the record of proceeding, it is not evident that their actual performance would require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty or its equivalent.

In this regard, the AAO finds that, regardless of the job title applied to them, the duties are described in terms of generic and generalized functions – for example, develop strategies and goals for financial management, obtain and monitor financial activity, and analyze the company's business practices - that convey neither the substantive nature of the work that the beneficiary would actually perform nor a need for a particular level of education, or educational equivalency, in a specific specialty in order to perform that work. Consequently, regardless of the job title ascribed to the proffered position, the record of proceeding lacks an evidentiary foundation that would satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). This decisive determination will now be discussed in terms of the separate components of this regulation.

Because the evidence in the record of proceeding does not substantiate that the proffered position is one for which there is normally a minimum requirement for a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, as the petitioner has not established the substantive nature of the proffered position - and therefore has not provided a basis for establishing more than superficial similarity with other positions - there is no basis in this record of proceeding for establishing positions as parallel to the proffered position. This precludes a finding that the degree-requirement specified by the petitioner is a common industry practice for the proffered position, so as to satisfy the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Neither the generalized and generic descriptions of the proffered position and its duties nor any other evidence in the record of proceeding develops the proffered position in terms of complexity or uniqueness. Accordingly, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the petitioner's particular position is so complex or unique that it can be performed only by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO also finds that the petitioner has not satisfied the elements of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). That is, it has not established a history of recruiting and hiring for the

proffered position only persons with at least a bachelor's degree in a specific specialty, and that such history was generated by the position's actual performance requirements.²

As already reflected in this decision's comments about the petitioner's dependence upon generalized and generic descriptions of the duties of the proffered position, the record of proceeding does not present the duties with sufficient specificity to establish their substantive nature, and, thereby, whatever degree of specialization and complexity may reside in them. Therefore, the petitioner has also failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), by not developing the proposed duties to an extent establishing their nature as so specialized and complex that their performance would require knowledge usually associated with the attainment of at least a bachelor's degree, or the equivalent, in a specific specialty.

Given the record of proceeding's lack of an evidentiary foundation that would satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the appeal will be dismissed, and the petition will be denied. For the sake of a comprehensive review, however, the AAO will also address whether a general financial manager position would qualify as a specialty occupation.

To make its determination whether a general financial manager position qualifies as a specialty occupation, the AAO turns again 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 Department of Labor'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)).

² A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The director denied the petition on August 28, 2009, finding that it is unlikely that the beneficiary will actually perform the duties of a financial manager because the petitioner's business is not sufficiently large or complex to employ a financial manager.

On appeal, counsel for the petitioner argues that the petitioner's business is sufficient to require the services of a financial manager. Preliminarily and contrary to counsel's assertion, the AAO notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position.

Given the generic description of the proffered duties and the fact that the beneficiary will allegedly head the petitioner's accounting department even though she is not a Certified Public Accountant (CPA), the AAO finds that the petitioner has failed to submit sufficient evidence to determine whether the position best fits under the financial manager section of the *Handbook*. Further, as can be seen in the *Handbook's* description of financial managers below, the *Handbook* states that financial managers who work in accounting departments, as is the case here according to the petitioner's organizational chart, are normally required to be CPAs. However, the petitioner did not provide documentation that the beneficiary is licensed to work as a CPA. Consequently, it seems unlikely that the beneficiary is actually working as a financial manager or, if she is, then the petitioner has failed to demonstrate that the beneficiary holds the appropriate license to work as the head of the petitioner's accounting department. The AAO also finds that, to the very limited extent that it is developed in the record of proceeding, the proffered position does not comport with any occupational classification for which the *Handbook* reports as a minimum entry requirement a bachelor's or higher degree in a *specific specialty*.

However, even if there were sufficient evidence to demonstrate that the proffered duties most closely resemble those found in the *Handbook* section describing financial managers, the position still would not qualify as a specialty occupation as defined at 8 C.F.R. § 214.2(h)(4)(ii). The training and qualifications required for financial managers are described as follows in the DOL *Handbook*, 2010-11 online edition:

Most financial managers need a bachelor's degree, and many have a master's degree or professional certification. Bank managers often have experience as loan officers or in other sales positions. Financial managers also need strong interpersonal, math, and business skills.

Education and training. A bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers. However, many employers now seek graduates with a master's degree, preferably in business administration, finance, or economics. These academic programs develop analytical skills and teach financial analysis methods and technology.

Experience may be more important than formal education for some financial manager positions—most notably, branch managers in banks. Banks typically fill branch manager positions by promoting experienced loan officers and other professionals who excel at their jobs. Other financial managers may enter the profession through formal management training programs offered by the company.

Licensure. Many financial managers work in accounting departments. Accounting positions normally require workers to be [CPAs]. (See the statement on accountants and auditors elsewhere in the *Handbook*.)

Although most financial managers need a bachelor's degree, this degree can be in a wide range of fields, including finance, accounting, economics, or business administration. Therefore, the *Handbook* does not indicate that at least a bachelor's degree in a *specific specialty* or its equivalent is required for financial managers.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

As the *Handbook* indicates no specific degree requirement for employment as a financial manager, and as it is not self-evident that, as described in the record of proceeding, the proposed duties comprise a position for which the normal entry requirement would be at least a bachelor's degree, or its equivalent, in a specific specialty, 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 or its equivalent. Accordingly, the AAO finds that the petitioner has not established its proffered position as meeting the requirement 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.

Again, 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. The advertisement submitted by the petitioner further demonstrates that, although the petitioner may require a bachelor's degree for the proffered position, the petitioner does not require at least a bachelor's degree in a specific specialty forming a nexus between the requisite degree and the proffered duties. Further, the petitioner has not established that parallel firms routinely require at least a bachelor's degree in a specific specialty.

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 financial manager positions, including degrees not in a specific specialty. As evident in the earlier discussion about the generalized descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than financial management positions 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 establish this criterion. The AAO does not find that there is enough evidence to document that the proffered position is that of a financial manager. However, even if the position were most closely aligned to that of a financial manager, the AAO does not find that the proposed duties, as generically described by the petitioner, reflect a higher degree of knowledge and skill than would normally be required of financial managers not equipped with at least a bachelor's degree, or its equivalent, in a specific specialty. Further, the generalized array of proposed duties do not establish a job that would require the beneficiary to possess skills and qualifications beyond those of a financial manager. The AAO, therefore, concludes that the proffered position has not been established as satisfying the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO disregards counsel's assertion that the petitioner requires at least a bachelor's degree in economics given that the petitioner stated a broader range of fields, including business administration, would be acceptable in the support letter and that the petitioner advertised a requirement of only a bachelor's degree generally for the proffered position. 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 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'r 1988). In addition to proving 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 also 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 supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring 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).

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 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.