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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

D2



DATE: OCT 14 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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:
[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 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 remain denied.

The petitioner claimed on the Form I-129 to be engaged in the newspaper publishing business, with three employees, a gross annual income of \$4,588,925, and a net annual income of \$132,115. It seeks to employ the beneficiary as a reporter 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 on the basis of her determination that the petitioner failed to demonstrate that its proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's two requests for additional evidence; (3) the petitioner's responses to the director's requests for additional evidence; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition.

The sole issue before us on appeal is whether the proposed position qualifies for classification 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 proposed 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 its April 9, 2009 letter of support, the petitioner stated that the beneficiary’s responsibilities would include reporting and writing news stories; covering and developing story ideas based on leads and tips; gathering information about events through research, interviews, investigation, and attendance at

political, news, sports, artistic, social, and other functions; reviewing and evaluating information in order to isolate pertinent facts and details; researching and analyzing background information; and determining the emphasis, length, and format of stories. In his September 3, 2009 letter, counsel added additional related duties, including recording interviews and meetings; monitoring incoming calls on the petitioner's news desk; reacting to breaking news; building and maintaining contacts in order to facilitate the flow of news; seeking out and investigating stories through contacts, press releases, and other media; reporting to the petitioner's editor and writing news and feature stories; and writing feature and short "filler" articles for the petitioner's subsidiary publications.

In making our determination as to whether the proposed position qualifies for classification as a specialty occupation, we turn 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 Department of Labor's *Occupational Outlook Handbook (Handbook)*, a resource upon which we routinely rely 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 petitioner contends, implicitly,¹ that the duties of the proposed position align with those of two occupational groupings described in the *Handbook*: (1) News Analysts, Reporters, and Correspondents; and (2) careers in the non-software publishing industry. In pertinent part, the *Handbook* states the following regarding news analysts, reporters, and correspondents:

In covering a story, *reporters*, sometimes referred to as *journalists*, investigate leads and news tips, look at documents, observe events at the scene, and interview people. Reporters take notes and also may take photographs or shoot videos. At their office, they organize the material, determine the focus or emphasis, write their stories, and edit accompanying video material. Many reporters enter information or write stories on laptop computers and electronically submit the material to their offices from remote locations. Increasingly, reporters are asked to maintain and produce material for a newspaper's Web site. In some cases, *newswriters* write a story from information collected and submitted by reporters. . . .

* * *

General-assignment reporters write about newsworthy occurrences—such as accidents, political rallies, visits of celebrities, or business closings—as assigned.

¹ Although the petitioner does not argue explicitly that the duties of its proposed position align with these two occupational groupings, it submits printouts from the *Handbook*'s website regarding their duties and educational requirements.

Large newspapers and radio and television stations assign reporters to gather news about specific topics—for example, crime or education. Some reporters specialize in fields such as health, politics, foreign affairs, sports, theater, consumer affairs, social events, science, business, or religion. Investigative reporters cover stories that may take many days or weeks of information gathering.

Some publications use teams of reporters instead of assigning each reporter one specific topic. As a member of a team, a reporter can cover a greater variety of stories. News teams may include reporters, editors, graphic artists, and photographers working together to complete a story.

Reporters on small publications cover all aspects of the news. They take photographs, write headlines, lay out pages, edit wire-service stories, and write editorials. Some also solicit advertisements, sell subscriptions, and perform general office work.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos088.htm> (last accessed October 5, 2011). With regard to occupations within the non-software publishing industry, the *Handbook* states the following:

Everything that is published in this industry must first be written. *Writers and authors* and *reporters and correspondents*, who comprise the majority of publishing's professional and related occupations, write the articles, stories, and other text that end up in publications. Writers are assigned stories to write by *editors*. At newspapers and news magazines, reporters usually specialize in certain categories, or "beats," such as education, crime, sports, or world news. Writers and reporters gather information on their topic by performing Internet and library research and by interviewing people in person, by telephone, or by e-mail. They must then organize their material and write it down in a coherent manner that will interest and entertain readers. Increasingly, these workers also are required to produce interactive content such as short video segments or participate in online forums for a publication's website. *Copywriters*, who write advertising copy, also are common in this industry.

Id. at <http://www.bls.gov/oco/cg/cgs013.htm#related>. We agree that the duties of the proposed position align with these occupational groupings. Having made that determination, we turn next to the *Handbook's* discussion of the educational credentials necessary for entry. The *Handbook* does not indicate that entry into either occupational grouping normally requires at least a bachelor's degree, or its equivalent, *in a specific specialty*. With regard to the education and training requirements for news analysts, reporters, and correspondents, the *Handbook* states the following:

Most employers prefer individuals with a bachelor's degree in journalism or mass communications, but some hire graduates with other majors. They look for experience at school newspapers or broadcasting stations, and internships with news organizations.

Id. at <http://www.bls.gov/oco/ocos088.htm>. These findings do not support a determination that a bachelor's degree *in a specific specialty* is the normal minimum requirement for entry into this occupational grouping. The fact that a bachelor's degree is "preferred" is not equivalent to the "normally required" criterion imposed by the regulation. Also, the *Handbook* specifically states that some employers find acceptable degrees from a range of fields.

With regard to occupations within the non-software publishing industry, the *Handbook* states the following:

Writers, reporters, and editors generally need a bachelor's degree. Most people in these occupations majored in English, communication, or journalism. Some publishers, however, prefer graduates with liberal arts degrees or specific subject knowledge if the person will be writing about a complex topic or doing technical writing.

Id. at <http://www.bls.gov/oco/cg/cgs013.htm#related>. Nor do these findings support a determination that a bachelor's degree *in a specific specialty* is the normal minimum requirement for entry into this occupational grouping. Again, the *Handbook* reports that employers would find acceptable an individual possessing a degree from a range of fields.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proposed position's title. The specific duties of the 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 beneficiary, 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.

Nor do we find convincing counsel's citation to the Department of Labor's *Occupational Information Network (O*NET™ Online)*. *O*NET™ Online* is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as *O*NET™ Online*'s JobZone assignments make no mention of the specific field of study from which a degree must come. As was noted previously, USCIS 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 proposed position. With regard to the Specialized Vocational Preparation (SVP) rating, we note that an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, USCIS 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 proposed position. For all of these reasons, the *O*NET™ Online* excerpt submitted by counsel is of little evidentiary value to the issue presented on appeal.

As discussed, we have determined that virtually all of the proposed position's duties are listed in the *Handbook* among the occupational groupings of (1) news analysts, reporters, and correspondents; and (2) careers in the non-software publishing industry. Our review has found that neither of these occupational groupings imposes a normal minimum entry requirement of a bachelor's degree in a specific field of study as required by section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). For all of these reasons, we find that the petitioner has failed to demonstrate that its proposed position qualifies for classification as a specialty occupation under the requirements of the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We turn next to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The petitioner has not satisfied the first of the two alternative prongs at 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, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proposed 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 proposed position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree *in a specific specialty*. Nor has the petitioner submitted evidence that the industry's professional associations have made a degree in a specific specialty a minimum requirement for entry.

In order to determine whether the petitioner's degree requirement is common to the industry in parallel positions among similar organizations, we have reviewed the job vacancy announcements contained in the record, and we find them unpersuasive. The petitioner has not submitted any evidence to demonstrate that any of these job postings are from companies "similar" to the petitioner. There is no evidence that the advertisers are similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. None of the announcements state the size of the particular employer. Also, there is no evidence in the record as to how representative these

advertisements are of the advertisers' usual recruiting and hiring practices. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, we note that not all of these job postings indicate that a baccalaureate degree in a specific field, or its equivalent, is a normal minimum entry requirement. Although Cyclon Corporation, *North Carolina Lawyer's Weekly*, TheStreet.com, Reed Construction Data, the *Pensacola News Journal*, Capital Markets World, the *Hattiesburg American*, the *Consumer Reporter*, the *Herald Times Reporter*, Elsevier, and the *Door County Advocate* all require a bachelor's degree, they do not require that the degree be in a specific specialty. Although the postings from FOX 61, ProQuest/Serials Solutions, the *News Journal*, and KSDK-TV state that a degree is "preferred," they do not indicate that it is mandatory. The posting from McGraw-Hill Publishing also states that a degree is "desired." Finally, the positions advertised by Time Warner, ProQuest/Serials Solutions, Soma Intimates, Sybase, Home Depot, G & B Solutions, Autodesk, WHAS-TV, KPNX-TV, and the unnamed marketing company advertising its vacancy through Craigslist.com cannot be considered "parallel" to the one proposed by the petitioner.

For all of these reasons, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has 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 duties of the proposed position are similar to positions within the occupational groupings of news analysts, reporters, and correspondents; and careers in the non-software publishing industry as outlined in the *Handbook*, and the *Handbook* does not indicate that a baccalaureate degree in a specific field, or its equivalent, is a normal minimum entry requirement for those positions. The duties proposed by the petitioner are no more complex or unique than those outlined by the *Handbook*; to the contrary, the duties proposed by the petitioner largely mirror those outlined in the *Handbook*. The duties discussed by the petitioner appear no more unique, complex, or specialized than those discussed in the *Handbook*. The evidence of record does not refute the *Handbook's* information indicating that a bachelor's degree from a specific field of study is not the normal minimum entry requirement for positions such as the one proposed here.

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to satisfy the third criterion, we normally review its past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.² In his

² Even if a petitioner believes or otherwise assert that a proposed position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any job so long as the employer

September 3, 2009 letter, counsel provided the names of six individuals whom he stated hold bachelor's degrees. However, that assertion conflicted with the petitioner's attestation on the Form I-129 that it only employs three individuals. Furthermore, counsel provided no evidence that any of these individuals are actually employed by the petitioner. Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel provided the names of two individuals who hold bachelor's degrees: J-M-³ who holds a degree evaluated to be equivalent to a bachelor's degree in communications; and M-C-⁴ who holds degrees evaluated to be equivalent to a bachelor's degree in business administration with a major in marketing management and a bachelor's degree in behavioral sciences. However, counsel's appellate submission does not establish the proposed position as a specialty occupation under this criterion. First, counsel again failed to submit any evidence to establish that either of these individuals is employed by the petitioner. Moreover, this submission indicates that the petitioner would find acceptable individuals with a range of degrees. Again, the petitioner must demonstrate that requires an individual with a bachelor's degree *in a specific specialty* as a normal minimum requirement for entry into the position. For all of these reasons, the petitioner has not satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of its proposed 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 in the specialty. As previously discussed, the *Handbook* indicates that a baccalaureate degree in a specific specialty is not a normal minimum entry requirement. The petitioner has failed to differentiate the duties of the proposed position from those described in the *Handbook* in and, as such, has failed to indicate the specialization and complexity required by this criterion. The evidence of record does not distinguish the duties of the proposed position as more specialized and complex than those of similar positions within the occupational groupings of news analysts, reporters, and correspondents; and careers in the non-software publishing industry, neither of which require nor are usually associated with at least a bachelor's degree in a specific field. As a result, the record fails to establish that the proposed position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proposed position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

³ Name withheld to protect individual's identity.

⁴ Name withheld to protect individual's identity.

The petitioner has failed to demonstrate that the proposed position qualifies for classification as a specialty occupation. Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(H)(i)(b) of the Act and this petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.