

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**  
**PUBLIC COPY**

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**



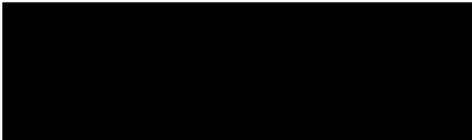
D2

DATE: **OCT 31 2011** 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 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 an importer/exporter and logistical manufacturing services provider with ten employees in the United States, a gross annual income of approximately [REDACTED] and no reported net income. 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 on the basis of her determination that the petitioner failed to demonstrate that the 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 request for additional evidence; (3) the petitioner's response to the director's request for additional evidence; (4) the director's denial letter; 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. Beyond the decision of the director, we find additionally that the petitioner has failed to demonstrate that the petition is supported by a certified labor condition (LCA) which corresponds to it.

The first 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 (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 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 September 30, 2009 letter, the petitioner proposed the following duties for the beneficiary:

- Coordinating the activities of the petitioner's staff "relative to" the areas of payroll, billing and collection, accounts receivable and accounts payable, accounting, and budgeting. The petitioner stated that the beneficiary would spend twenty percent of his time performing these duties.
- Preparing, or directing the preparation of, financial statements, business activity reports, annual budgets, and financial position forecasts; and reviewing collection reports in order to determine the status of collections and the amounts of outstanding balances. The petitioner stated that the beneficiary would spend twenty percent of his time performing these duties.
- Analyzing financial information and preparing financial reports to determine or maintain records of assets, liabilities, profit and loss, tax liability, and related financial activities. The petitioner stated that the beneficiary would spend ten percent of his time performing these duties.
- Reviewing and, if necessary, amending or establishing company procedures for controlling its assets; and delegating authority for the receipt, disbursement, protection, and custody of funds and financial instruments. The petitioner stated that the beneficiary would spend ten percent of his time performing these duties.
- Preparing quarterly reconciliation of the petitioner's investment portfolio and analyzing available financial products. The petitioner stated that the beneficiary would spend ten percent of his time performing these duties.
- Developing relationships with banking, insurance, and accounting personnel in order to facilitate financial activities for the company. The petitioner stated that the beneficiary would spend five percent of his time performing these duties.
- Maintaining his current knowledge of the petitioner's organizational policies and procedures, state and federal policies and directives, and current accounting standards. The petitioner stated that the beneficiary would spend five percent of his time performing these duties.
- Performing financial analysis and building business models in order to support new ventures. The petitioner stated that the beneficiary would spend five percent of his time performing these duties.
- Providing internal accounting control for the petitioner and foreign companies. The petitioner stated that the beneficiary would spend five percent of his time performing these duties.
- Recording investment gains and losses, revenue, expenses, and changes in the company's investment position. The petitioner stated that the beneficiary would spend five percent of his time performing these duties.

- Performing financial and operational analysis in order to impact the decision-making of the petitioner's senior management, and preparing weekly and monthly commentary and analysis. The petitioner stated that the beneficiary would spend five percent of his time performing these duties.

In making our determination whether the proposed position qualifies 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)*, on 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 claims that the duties of the proposed position align with those of financial managers, as such positions are described in the *Handbook*. In pertinent part, the *Handbook* states the following:

*Financial managers* oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. Managers also develop strategies and implement the long-term goals of their organization.

The duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, risk and insurance manager, and manager of international banking. *Controllers* direct the preparation of financial reports, such as income statements, balance sheets, and analyses of future earnings or expenses, that summarize and forecast the organization's financial position. *Controllers* also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments. *Treasurers* and *finance officers* direct their organization's budgets to meet its financial goals. They oversee the investment of funds, manage associated risks, supervise cash management activities, execute capital-raising strategies to support the firm's expansion, and deal with mergers and acquisitions. *Credit managers* oversee the firm's issuance of credit, establishing credit-rating criteria, determining credit ceilings, and monitoring the collections of past-due accounts.

*Cash managers* monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of their firm. For example, cash flow

projections are needed to determine whether loans must be obtained to meet cash requirements or whether surplus cash can be invested. *Risk and insurance managers* oversee programs to minimize risks and losses that might arise from financial transactions and business operations. Insurance managers decide how best to limit a company's losses by obtaining insurance against risks such as the need to make disability payments for an employee who gets hurt on the job or costs imposed by a lawsuit against the company. Risk managers control financial risk by using hedging and other techniques to limit a company's exposure to currency or commodity price changes. Managers specializing in international finance develop financial and accounting systems for the banking transactions of multinational organizations. Risk managers are also responsible for calculating and limiting potential operations risk. Operations risk includes a wide range of risks, such as a rogue employee damaging the company's finances or a hurricane damaging an important factory. (Chief financial officers and other executives are included with top executives elsewhere in the *Handbook*.)

Financial institutions—such as commercial banks, savings and loan associations, credit unions, and mortgage and finance companies—employ additional financial managers who oversee various functions, such as lending, trusts, mortgages, and investments, or programs, including sales, operations, or electronic financial services. These managers may solicit business, authorize loans, and direct the investment of funds, always adhering to Federal and State laws and regulations.

*Branch managers* of financial institutions administer and manage all of the functions of a branch office. Job duties may include hiring personnel, approving loans and lines of credit, establishing a rapport with the community to attract business, and assisting customers with account problems. Branch managers also are becoming more oriented toward sales and marketing. As a result, it is important that they have substantial knowledge about the types of products that the bank sells. Financial managers who work for financial institutions must keep abreast of the rapidly growing array of financial services and products.

In addition to the preceding duties, financial managers perform tasks unique to their organization or industry. For example, government financial managers must be experts on the government appropriations and budgeting processes, whereas healthcare financial managers must be knowledgeable about issues surrounding healthcare financing. Moreover, financial managers must be aware of special tax laws and regulations that affect their industry.

Financial managers play an important role in mergers and consolidations and in global expansion and related financing. These areas require extensive, specialized knowledge to reduce risks and maximize profit. Financial managers increasingly are hired on a temporary basis to advise senior managers on these and other matters. In fact, some small firms contract out all their accounting and financial functions to companies that provide such services.

*Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos010.htm> (last accessed October 19, 2011). 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.

The petitioner has not demonstrated that it will employ the services of a financial manager, who is part of an executive decision-making team. Furthermore, there is no evidence that the proposed position would include complex or advanced financial planning duties involving mergers and consolidations or that it would require an individual with knowledge of sophisticated financial planning techniques normally associated with the duties of a financial manager. The petitioner does not indicate that the beneficiary would personally oversee the investment of funds, execute capital-raising strategies, or oversee the company's issuance of credit. Nor do the duties as described by the petitioner appear to include the types of executive decision-making described in the *Handbook* required by financial managers.

The petitioner's description of the duties of the proposed position provides an overview of a position that may be associated with managing financial activities. This overview, however, does not provide the detail necessary to determine that the actual daily duties of the proposed position, as the duties relate to the petitioner's business, incorporate the duties of a specialty occupation. The petitioner did not provide documentary evidence of the reports generated and analyzed, of financial forecasts or budget analysis, or of any reports advising management. The record includes no underlying evidence substantiating the complexity of the petitioner's financial business or any documentation that would provide an understanding of the petitioner's requirement that its financial manager must have a baccalaureate or higher degree to perform the accounting duties associated with its business operations. 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)). Such a general overview of an occupation without the attendant detail relating the actual duties of the occupation to the petitioner's actual business operations is insufficient to establish the position as a specialty occupation.

The AAO observes that the job description is so general that it could be considered as describing a general managerial position, an administrative managerial position, a junior accounting position, or a number of occupations that do not necessarily require the attainment of a bachelor's degree in a specific specialty, or higher, in order to perform the duties of the position. When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. In the instant matter, the petitioner's job description does not progress beyond a generalized outline of the proposed tasks.

The petitioner's description of the proposed position is insufficient to establish the actual duties of the position as those duties impact the day-to-day operations of the petitioner. The AAO does not accept a broad overview of an occupation as definitive of a particular position's daily duties. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of a proposed position and must provide evidence of what the duties of the position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise, essentially requires acceptance of any petitioner's broadly stated description, rather than a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary and what the proffered position actually requires.

The petitioner's description of the duties of the proposed position lacks specificity. It fails to explain what the beneficiary would actually be doing on a day-to-day basis, and does not convey the actual, substantive work that would actually be required of the beneficiary. Accordingly, 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 the proposed position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. The record does not include any evidence from firms, individuals, or professional associations regarding an industry standard. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proposed position from similar but non-degreed employment. Moreover, the evidence of record about the particular position that is the subject of this petition does not establish how aspects of the position, alone or in combination, make it so unique or complex that it can be performed only by a person with a degree in a specific specialty. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, we normally review the petitioner's 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.<sup>1</sup> However, the petitioner has submitted no such information.

---

<sup>1</sup> 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

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. However, as discussed earlier in this decision, the record fails to establish the substantive nature of this particular position's actual duties. Accordingly, the evidence does not establish the level of specialization and complexity required by this criterion. The evidence of record does not contain sufficient information to establish that the duties as described are duties that correspond to a position that is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1)-(4), and this petition was properly denied.

Finally, it is noted that the certified LCA provided in support of the instant petition lists a Level I prevailing wage level for financial managers in Columbus, Ohio. This indicates that the LCA, which is certified for an entry-level position, is at odds with the statements by counsel and the petitioner regarding the complexity of the duties to be performed by the beneficiary.

Given that the LCA submitted in support of the petition is for a Level I wage,<sup>2</sup> it must therefore be concluded that either (1) the position is a low-level, entry position relative to other financial managers; or that (2) the LCA does not correspond to the petition.

While the DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration

---

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 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.

<sup>2</sup> According to guidance regarding wage level determination issued by the DOL in 2009 entitled *Prevailing Wage Determination Policy Guidance*, at page 7, Level I wage rates, which are labeled as "entry" rates, "are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered."

benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part, the following:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

(Italics added). The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has not demonstrated that the petition is supported by an LCA which corresponds to the petition, and the petition must be denied for this additional reason.

The petitioner has failed to demonstrate that the proposed position qualifies for classification as a specialty occupation. Beyond the decision of the director, the petitioner has also failed to demonstrate that the petition is supported by an LCA which corresponds to the petition.<sup>3</sup> 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 petition will remain 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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

---

<sup>3</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).