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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: Office: VERMONT SERVICE CENTER FILE:

JAN 03 2012
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, Vermont 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 states it is engaged in international marketing and was established in 1987 and employs one person. It seeks to employ the beneficiary as a market research analyst 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 had not offered sufficient evidence establishing 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 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 supplemental brief and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The primary issue for consideration is whether the petitioner's proffered 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 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.

The petitioner states that it is seeking the beneficiary’s services as a market research analyst. In a September 15, 2009 letter, the petitioner listed the beneficiary’s proposed duties as follows:

- Research the trends of the economic industry in the United States in each specific area on which [the petitioner’s] clients [are] willing to invest in the United States with the trends of such industry in Europe and Latin America;
- Find, analyze and foresee the prices of the products and services provided by

- each [of the petitioner's] clients willing to invest in the United States and compare it with the prices of such industry in Europe and South America;
- Analyze the marketing conditions of the economic industry in the United States on each specific area on which [the petitioner's] clients [are] willing to invest in the United States and compare them with the conditions in Europe and South America;
 - Analyze the marketing conditions in the local, regional and international areas to determine potential sales of the products and services of [the petitioner's] clients willing to invest in the United States;
 - Examine and analyze statistical data to forecast future marketing trends[;]
 - Establishing research methodology and design format for data gathering regarding each specific industry area on which [the petitioner's] clients [are] willing to invest in the United States do business in [sic];
 - Develop research methods to gather data on competitors, such as pricing and prevailing conditions;
 - Analyzing the research results and preparing reports to the management of [the petitioner's] clients willing to invest in the United States; and
 - Actively participate in management meetings in order to explain the analysis and data gathered in her research.

The petitioner noted that as with any market research analyst position, the minimum requirement to perform the duties of the proffered position is a professional degree in economics or marketing or accredited experience in the field. The petitioner noted that the beneficiary possessed a Bachelor of Science degree in business administration obtained from a United States university.

On October 23, 2009, the director issued an RFE requesting additional evidence that the proffered position is a specialty occupation. The director also requested evidence regarding the nature, scope, and activity of the petitioner's business, among other items.

In response, counsel for the petitioner referenced the Department of Labor's *O*NET Online Summary Report (O*NET)* for market research analysts (19-3021.00) which indicated that most of these occupations require a four-year degree. The petitioner also provided a revised description of duties for the proffered position indicating that the beneficiary would:

- Research the trends of foreign investments in the US, studying the real estate market, financing and other business opportunities for our foreign investors. The kind of research will vary depending on each client. She will compare said markets with the same markets in Spain, the Caribbean and Latin America. This way our clients will see the different ratio and business opportunities in each geographical area with comparison with the US market. She will use 20% of her time [on] this duty;
- Find, analyze and foresee the prices of the real estate market, financing and other business opportunities for our foreign investors. The kind of analysis will vary depending on each client. She will compare said markets with the same markets in Spain, the Caribbean and Latin America. This way our clients will see the different ratio and business opportunities in each geographical area

with comparison with the US market. She will use 20% of her time [on] this duty;

- Analyze the marketing conditions of the real estate market, financing and other business opportunities for our foreign investors. The kind of analysis will vary depending on each client. She will compare said markets with the same markets in Spain, the Caribbean and Latin America. This way our clients will see the different ratio and business opportunities in each geographical area with comparison with the US market. She will use 20% of her time [on] this duty;
- Analyze the marketing conditions in the local and regional areas where the foreign investment of our clients will take place to determine the best investment for our clients. She will use 10% of her time [on] this duty;
- Examine and analyze statistical data to forecast future marketing trends on our clients['] investments, in the areas of real estate, financing and other business opportunities. She will use 10% of her time [on]this duty;
- Analyzing the research results and prepare [sic] reports to the management. She will use 10% of her time [on] this duty[;] and
- Actively participate in management meetings in order to explain the analysis and data gathered in her research. She will use 10% of her time [on] this duty.

The petitioner also included its brochure and US Income Tax Return to demonstrate that it could sustain an employee performing the above described duties. The record also included eight advertisements from other companies advertising for positions labeled senior market research analyst, market research analyst, research/industry analyst, and marketing analyst/direct marketing. The advertisements indicated a bachelor's degree was required. Some advertisements indicated that a bachelor's degree in various fields of study was either required or preferred. The fields of study referenced included business, marketing, statistics, economics, finance, a social science research discipline, engineering, biological science, computer science, information systems, health administration, and mathematics, or related fields or experience.

The director denied the petition on December 1, 2009.

On appeal, counsel for the petitioner references the previously submitted documentation and asserts that the director did not consider its revised description of the beneficiary's duties with the allocation of time noted. Counsel contends that the petitioner is a viable business and that the regulations and statutes do not preclude a one-employee business from petitioning for an H-1B nonimmigrant worker.

To make its determination whether the employment described qualifies as a specialty occupation, the AAO turns 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)).

Upon review, the petitioner has provided a broad and general description of the beneficiary's proposed duties. Similarly, the petitioner's brochure vaguely references "setting the right infrastructure to provide the appropriate consulting to our prospective customers in investments, real state [sic] financing, business strategies and development, image promotions and publicity campaigns, management and development projects." The petitioner's 2008 federal tax return shows gross receipts or sales as \$236,162 and lists its business as market research and promotions. The petitioner has not provided sufficient details regarding the proffered duties of its specific position for the AAO to determine what the beneficiary will actually be doing on a day-to-day basis. The limited information regarding the petitioner and the general description of the beneficiary's proposed duties precludes a determination that the petitioner has sufficient work for the beneficiary to perform duties requiring at least a bachelor's degree or its equivalent in a specific specialty on a full-time basis. However, even if the petitioner could demonstrate that the proffered position is that of a market research analyst, which it has not done, the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2010-2011 edition, does not indicate that entry into positions in that occupation normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos013.htm> (last accessed December 2011).

While the *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many market and survey research jobs, it does not indicate that the degrees held by such workers must be in a specific specialty that is directly related to market research, as would be required for the occupational category to be recognized as a specialty occupation. See *id.* This is evident in the range of qualifying degrees indicated in the Significant Points section that introduces the *Handbook's* chapter "Market and Survey Researchers," which states: "Market and survey researchers can enter the occupation with a bachelor's degree, but those with a master's or Ph.D. in marketing or a social science should enjoy the best opportunities." *Id.*

That the *Handbook* does not indicate that market research analyst positions normally require at least a bachelor's degree in a specific specialty is also evident in the following discussion in the "Training, Other Qualifications, and Advancement" section of its chapter "Market and Survey Researchers," which does not specify a particular major or academic concentration:

A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree is usually required for more technical positions.

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take social science courses,

including economics, psychology, and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines.

Id. As will be further discussed below, the advertisements provided by the petitioner confirm the *Handbook's* report that a variety of disciplines may be useful to gain employment as a market research analyst. Because the *Handbook* indicates that entry into the market research analyst occupation does not normally require a degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation.

The AAO acknowledges counsel's reference to the *O*NET* Summary Report for market research analysts (19-3021.00).¹ However, the *O*NET* is insufficient to establish that the position qualifies as a specialty occupation. A designation of Job Zone 4 -- Education and Training Code indicates that a position requires considerable preparation. It recognizes that although most of the occupations require a four-year bachelor's degree, some do not. The *O*NET* does not report that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Therefore the *O*NET* information is not probative in establishing the proffered position qualifies as a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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.

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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

¹ The most recent version of the *O*NET*, (found at www.onetonline.org and last accessed December 2011) designates market research analysts with the SOC Code 13-1161-00 and groups the occupation with marketing specialists. The *O*NET* continues to indicate that a market research analyst occupation is a Job Zone 4 occupation.

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. Moreover, it appears that the petitioner is satisfied that an individual with a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration is qualified to perform the duties of the proffered position. This acknowledgment is tantamount to an admission that the proffered position is not in fact 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 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.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of eight advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the market research and consulting industry. However, as observed above, the advertisements establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree or the equivalent in a *specific specialty*. The range of degrees mentioned in the advertisements as possible qualifications for the occupation of market research analyst confirms that a bachelor's degree in a precise course of study is not required for entry into the occupation. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, because the petitioner has not provided a comprehensive description of the duties of its proffered position, it is not possible to establish that its position is parallel to the advertised positions. Further, the petitioner has not established that it is similar to the companies posting the advertisements. 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.

The petitioner has also not satisfied 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." As observed above, the petitioner failed to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. Specifically, the petitioner failed to demonstrate how the market research analyst 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 evidence of record does not establish that this position is significantly different from other marketing positions and as such does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for market research analyst positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than a marketing occupation or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of market research analyst is so complex or unique relative to other marketing positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be

concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. The petitioner here has not provided sufficient detailed information regarding the actual duties of the proffered position to establish that the duties are so specialized and complex. Again, there is nothing in the record that elevates the proffered position to a position that demonstrates the actual duties are more specialized and complex than market-research-analyst positions that are not usually associated with a degree in a specific specialty. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Therefore, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of 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 reason. 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.