

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



b2

Date: JUL 05 2012

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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Michael T. Keedy
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 be denied.

On the Form I-129 visa petition, which was filed on November 2, 2009, the petitioner stated that it is a photography services provider. To employ the beneficiary in what it designates as a "Business Analyst (Operations Research)" position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation 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 Labor Condition Application (LCA) provided to support the visa petition is certified for a position within the Management Analyst occupational classification.

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner's human resources director asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.¹

As will be discussed below, the AAO has determined that the director's decision to deny the petition on the specialty occupation issue was correct. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the submissions on appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation 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.

¹ The brief asserts that the petitioner has consulted with counsel in preparing the brief, but that statements in the letter are to be considered assertions of the petitioner. The brief is not signed by counsel, but by the petitioner's human resources director.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means 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 a particular position 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.

Among the documents filed with the Form I-129 is an October 8, 2009 letter in support of the petition from the petitioner's Director of Human Resources. That letter contains the following description of the duties of the proffered position:

Review and analyze [the petitioner's] methods and procedures associated with its venue operations and conduct organizational studies and evaluations; plan study of current activities, paying particular attention to planning sophisticated promotional and marketing campaigns, creating methods by which to streamline overhead costs while simultaneously retaining exceptional service, coordinating and integrating venue activities, developing enhanced communication systems, evaluating and detecting areas to be improved in financial activities; gather and organize information on problems or procedures, including present training procedures, inventory control, overhead costs, overall quality, and proposed methods by which to improve current activities and improve and expand service operations; analyze data gathered, develop information, and consider available solutions or alternate methods of proceeding to enhance services; organize and document findings of studies and prepare recommendations to help management in its efforts to implement improvements; confer with management to assure smooth functioning of newly implemented procedures and develop procedure manuals to assist organization in future activities; play lead role in training service personnel to ensure that procedures are properly implemented and overall level of sophistication is improved; represent organization in its dealings with host-venue management and ownership; supervise subordinate managers and professional employees; direct, coordinate, and evaluate subordinate supervisors; oversee planning, assigning, and directing of projects; oversee interviewing, hiring, and disciplining of professional employees.

At the outset, the AAO finds that, as reflected in the above excerpt from the petitioner's letter of support, the petitioner describes the duties of the proffered position exclusively in terms of generalized functions that appear generic to the claimed occupation in general. Illustrative examples from the list above are, for instance, "Review and analyze [the petitioner's] methods and procedures associated with its venue operations"; "coordinating and integrating venue activities"; "confer with management to assure smooth functioning of newly implemented procedures and develop procedure manuals to assist organization in future activities"; and "oversee planning, assigning, and directing of projects." As such, the AAO finds, that the extent to which the proffered position and its constituent duties are described in this record of proceeding do not convey, alone or in the aggregate,

an inherent need for the application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

While asserting many functional components for the proffered position, the does not explain and document them in any substantially specific details that would convey the methodologies, analytical processes, and other substantive aspects of the proffered position; what performance of those job aspects would require in theoretical and practical applications of highly specialized knowledge; and *any necessary correlation between such applications and attainment of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.*

As such, the AAO additionally finds, that the evidence in the record of proceeding does not distinguish the proposed duties, or the proffered position that they comprise, as more unique, specialized, and/or complex than positions which may share those same generalized functions and yet not 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, which requirement is essential for a specialty occupation as defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The AAO also observes that the petitioner has not supplemented the position and duty descriptions with persuasive evidence that their actual performance in the particular context of the petitioner's business operations 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.

As these evidentiary assessments and findings are critical to its analysis of the criteria 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO hereby deems them incorporated into its analysis of each of those criteria later in this decision.

Now, the petitioner's Director of Human Resources also stated:

The position requires, at a minimum, a Bachelor's degree (or the professional experience equivalent, i.e., three years of progressively responsible professional experience for one year of post-secondary education) in Business Administration, or a closely-related field.

Further, the AAO notes that the acceptability of a bachelor's degree in business administration as a sufficient academic credential is indicative of a position that is not 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. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove 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 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 degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to

require 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).

The assertion by the petitioner's Director of Human Resources that the educational requirement of the proffered position may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is tantamount to an admission that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, that it does not qualify as a specialty occupation position, and that the visa petition is not approvable. This is sufficient reason, in itself, to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

On November 13, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, the petitioner's Director of Human Resources provided an expanded list of the duties of the proffered position. She also asserted:

In light of the highly specialized nature of this position, a position which requires extensive knowledge of business management and administration, particularly within the hospitality and resort industries, we confirm that our Business Management Analyst requires at least a bachelor's degree, or the equivalent, to perform the duties in question.

Again, the petitioner's Director of Human Resources did not indicate that the position requires a bachelor's degree or the equivalent *in a specific specialty*.

The director denied the petition on January 4, 2010, finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation. More specifically, the director noted that the beneficiary would work at the San Diego Zoo and Wild Animal Park venues, and that the record does not establish that the work to be performed qualifies as management analyst work. The director analyzed the proffered position as a general manager position, as discussed in the *Top Executives* chapter of the U.S. Department of Labor, Bureau of Labor Statistics (DOL) *Occupational Outlook Handbook (Handbook)*.

On appeal, the petitioner's Director of Human Resources contends that the petitioner has a legitimate need for a management analyst in the proffered position, and that the analysis of the position as a general manager position was improper.

According to the petitioner, its main office is in Wheat Ridge, Colorado, and the beneficiary would work at the San Diego Zoo and Wild Animal Park.

The AAO will now address the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if the petitioner establishes its particular proffered position as one for which the normal minimum entry requirement is a bachelor's or higher degree in a specific specialty or its equivalent.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² In the chapter entitled *Management Analysts*, the *Handbook* states the following about the duties of a management analyst:

Management analysts, often called management consultants, propose ways to improve an organization's efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues

The *Handbook* states, more concretely, the following as the duties of such positions:

- Gather and organize information about the problem to be solved or the procedure to be improved
- Interview personnel and conduct on-site observations to determine the methods, equipment, and personnel that will be needed
- Analyze financial and other data, including revenue, expenditure, and employment reports, including, sometimes, building and using sophisticated mathematical models
- Develop solutions or alternative practices
- Recommend new systems, procedures, or organizational changes
- Make recommendations to management through presentations or written reports
- Confer with managers to ensure that the changes are working

The duties of the proffered position as listed in the petitioner's human resources director's October 8, 2009 letter are so abstractly described that whether the proffered position is a management analyst position is unclear. However, the petitioner claims that the proffered position is a management analyst position and the approved LCA provided to support the visa petition is for such a position. The AAO will therefore assume, *arguendo*, that the proffered position is a management analyst position in its analysis of the specialty occupation issue.

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

The *Handbook* states the following about the educational requirements of management analyst positions:

A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA). In 2010, 28 percent of management analysts had a master's degree.

Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, and engineering.

Although the *Handbook* states that a bachelor's degree is a typical entry-level requirement for management analyst positions, it does not indicate that the degree, even for those positions that require one, must be in *any specific specialty*. Instead, it indicates that a degree in business, management, accounting, marketing, economics, statistics, computer and information science, or *engineering might qualify one for such a position*. Further, as was explained in detail above, an otherwise undifferentiated degree, even a master's degree, in business administration is not a degree in a specific specialty. The *Handbook* does not indicate that management analyst positions categorically require a minimum of a bachelor's degree or the equivalent in a specific.

Further, the petitioner's own Director of Human Resources made clear that a bachelor's degree in business administration, which is not a degree in a specific specialty, would satisfy the educational requirements of the proffered position. This makes clear that a bachelor's or higher degree or its equivalent in a specific specialty is not normally the minimum requirement for entry into the particular position. The petitioner has not, therefore, satisfied the criterion of 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)).

As was observed above, the *Handbook* does not report that the petitioner's industry requires management analysts to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, the record contains no evidence pertinent to a professional association of management analysts that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. Also, the record contains no letters or affidavits from others in the petitioner's industry.

In short, the record contains no evidence that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations. The petitioner has not, therefore, satisfied criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other management analyst positions in the petitioner's industry may not require a minimum of a bachelor's degree, or the equivalent, in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The AAO here repeats that it is incorporating by reference into the analysis of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) its earlier comments and findings regarding the generalized and generic level at which the proposed duties and the proffered position are presented in this record of proceeding. As reflected in the content of this decision's earlier discussion of the proffered position and the duties ascribed to it, the petitioner has not focused upon, nor provided evidence that develops, relative uniqueness or complexity as attributes of the proffered position. Further, and as also previously expressed in this decision, the evidence of record does not distinguish the proposed duties, or the proffered position that they comprise, as more unique, specialized, and/or complex than positions which may share those same generalized functions and yet not 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. Accordingly, the petitioner has not shown that its particular position is so complex or unique that it can be performed only a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Further, as was noted above, the petitioner's Director of Human Resources has implicitly conceded that the educational requirements of the proffered position may be satisfied by a degree in business administration, which is an admission that the position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

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

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

In light of the generalized level at which they are described in the record of proceeding and in light of the lack of substantial details provided about the nature and level of knowledge that they would require when actually performed in the particular context of the petitioner's particular business operations, the duties of the proffered position are not sufficiently developed to even convey relative specialization and complexity as attributes of those duties, let alone as being at a level that would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty. It follows that, in fact, the generalized and generic limits of their descriptions does not distinguish the proposed duties as more specialized and complex than such generic duties that are shared by the range of management analyst positions that do not involve applying knowledge usually associated with the attainment of at least a bachelor's degree in a specific specialty.

Further, as was noted and explained above, the petitioner's Director of Human Resources has implicitly conceded that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation position. The AAO concludes, therefore, that the director did not err in denying the petition for its failure to establish a specialty occupation. Accordingly, the appeal will be dismissed and the petition denied on this basis.

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. The appeal will be dismissed and the petition denied.

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