

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**

[REDACTED]

82

**MAY 03 2012**

Date: 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]

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,

*for Michael T. Kelly*  
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 the petitioner stated that it is a "Patent Information consulting and conference organization." To employ the beneficiary in what it designates as a market research analyst position, the petitioner endeavors to classify her 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 director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

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 counsel's 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.

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 (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 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.

Counsel submitted evidence with the visa petition that the beneficiary earned a bachelor's degree in sociology and criminology from Brunel University in the United Kingdom. Counsel subsequently submitted an evaluation that states that the beneficiary's degree is equivalent to a bachelor's degree in criminology and sociology earned at a United States institution.

With the visa petition, counsel also submitted a letter, dated November 30, 2009, from the petitioner's vice president. That letter states:

We would like to offer [the beneficiary] the position of Market Research Analyst. The Marketing Research Analyst is responsible for working with our marketing department in the analysis of marketing data related to conferences in order to develop effective marketing programs and strategies to ensure effective and profitable conferences. Specifically, the Market Research Analyst will review past conference statistics in order to determine the size and character of a given conference, and, using that information, review proposed convention sites for appropriate size, location, support services, logistics and other related issues. In addition, the Marketing Research Analyst will review market information in order to develop an effective marketing plan for various conferences and presentations. Conferences and presentations that are not well-marketed are not profitable. The development of an effective marketing plan requires an analysis of past marketing plans and post-conference surveys in order to determine the needs of conference attendees in order to project future conference needs. It also requires the review, analysis and modification of past marketing campaigns to develop and implement new marketing programs related to these conferences and other events.

The petitioner's vice president further stated:

In order to perform these duties, a Market Research Analyst must have a strong background in Communications, Psychology, Sociology, Marketing, or a related field, such as is learned in a University-level course.

As a preliminary matter, it must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "Communications, Psychology, Sociology, Marketing, or a related field" for the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the alleged requirement of a degree in any of several disparate fields does not establish the position as a specialty occupation. See § 214(i)(1) of the Act (requiring in pertinent part the "application of a body of highly specialized knowledge" and "attainment of a bachelor's or higher degree in *the* specific

specialty" (emphasis added)); cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly 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, or its equivalent, in one specialized field of study. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in the specific specialty or its equivalent that is directly related to the proposed position.

Again, the petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in communications, psychology, sociology, or marketing. As these dissimilar fields of study fail to delineate a specific specialty or its equivalent, this assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation position, and 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 December 10, 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, counsel provided (1) a photocopy of the *Market and Survey Researchers* chapter of the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*; (2) printouts of web content from sites maintained by the sociology departments of two universities; (3) résumés of three employees; (4) a letter, dated January 14, 2010, from the petitioner's vice president; and (5) counsel's own letter, dated January 20, 2010.

The content from university web pages states that a degree in sociology qualifies one for a wide range of positions. Specifically, the web site of the University of California at Berkeley states, "Students [of sociology] who especially enjoy research design, statistics, and data analysis seek positions in marketing, public relations, and organizational research." The web site of the University of California at San Diego states that one of its sociology graduates entered an "analyst" position.

The résumés provided show that [REDACTED] has a bachelor's degree in marketing, [REDACTED] has a bachelor's degree in international business, and [REDACTED] has a bachelor's degree in communications and media studies with an emphasis in journalism and advertising.

In her January 14, 2010 letter, the petitioner's vice president stated that the petitioner had never hired anyone to fill the proffered position who did not have a bachelor's degree. She further stated that the petitioner has employed three people in its marketing department, and referred to the three attached résumés. She also cited the *Handbook* and the University of California websites and asserted that a sociology degree qualifies one for a market research analyst position and that the beneficiary's education qualifies her for the proffered position. In support of that position, the petitioner's vice

president noted that the beneficiary took such classes as Themes and Perspectives in Psychology; Victimology; Gender, Crime and Justice; Community Care; Community Corrections; Law in Social Context; Survey Methods; Introduction to Research Methods; White Collar Crime; and Interpretations of the Welfare State.

As the decision of denial made clear, the contested issue is not whether a sociology degree qualifies one for market research analyst positions in general, nor whether the beneficiary's education qualifies her for the proffered position in the instant case. At issue is whether the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

In her January 20, 2010 letter, counsel also cited the *Handbook* and the printouts of University of California web content, but asserted that they show that the proffered position qualifies as a specialty occupation position.

The director denied the petition on January 28, 2010, finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation.

On appeal, counsel cited the *Handbook* for the proposition that the beneficiary's degree in sociology is a sufficient preparation for a market research analyst position. The AAO reiterates that the basis for the denial of the visa petition was not that the petitioner had failed to show that the beneficiary is qualified for the proffered position, but that the petitioner has failed to show that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

Counsel also cited a recent previous non-precedent decision of the AAO for the proposition that a market research analyst position is categorically a specialty occupation position. Among the reasons the case cited is not persuasive is that counsel has not established that the facts of the cited decision are substantially the same as the facts in the instant case.

Further, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding, *see* 8 C.F.R. § 103.2(b)(16)(ii). The AAO will decide the instant case based on the evidence in the record.

Further still, the decision upon which counsel seeks to rely did not pertain to whether a particular position was a specialty occupation position as defined by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), but whether beneficiary qualified as a member of the professions holding an advanced degree within the meaning of 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2).

Finally, while 8 C.F.R. § 103.3(c) provides that USCIS precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

For all of the reasons explained above, counsel's reliance on an unpublished USCIS case is without persuasive impact.

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 demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent. In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> In the chapter entitled *Market and Survey Researchers*, the *Handbook* describes the duties of market research analysts as follows:

Market research analysts help companies understand what types of products people want, determine who will buy them and at what price. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze data on past sales to predict future sales.

Market research analysts devise methods and procedures for obtaining the data they need by designing surveys to assess consumer preferences. While a majority of surveys are conducted through the Internet and telephone, other methods may include focus group discussions, mail responses, or setting up booths in public places, such as shopping malls, for example. Trained interviewers usually conduct the surveys under a market research analyst's direction.

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos013.htm> (last accessed January 13, 2012).

Although some aspects of the proffered position appear more closely related to the duties of meeting and convention planners, as described in the *Handbook* chapter of the same name, the duties described are also largely consistent with market research analyst positions. The AAO will assume,

---

<sup>1</sup> 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 2010 – 2011 edition available online.

*arguendo*, that the proffered position is a market research analyst position, as asserted on both the visa petition and the LCA and by both counsel and the petitioner's vice president.

The *Handbook* states the following about the educational requirements of market and survey researcher positions, including market research analyst positions:

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.

The *Handbook* indicates that market and survey researcher positions require a minimum of a bachelor's degree, and that prospective market and survey researchers should take classes in the social sciences, and that courses in mathematics, statistics, sampling theory and survey design, and computer science are also helpful. It does not, however, state that such positions require a minimum of a bachelor's degree or the equivalent in sociology, or in any other specific subject.

Counsel appeared to cite the web content from the University of California as evidence that a degree in sociology is the normal minimum entry requirement for a market research analyst position. That web content, however, does not state anything that supports that position. Rather, they state that a degree in sociology may prepare one for such a position. They do not state that such a degree, or any degree, is necessary. They do not state that any other bachelor's degree might not prepare one for such positions. Even taken at face value, the printouts of web content lend no support for the proposition that a bachelor's degree in sociology is the normal minimum entry requirement for the proffered position.

The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and 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* provides no support for the proposition that the petitioner's industry, or any other, requires market research analysts to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of market research analysts that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the petitioner's industry. In short, the petitioner provided no evidence pertinent to the petitioner's industry.

The petitioner has not demonstrated 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, and 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 market research 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.

Counsel referred to the duties of the proffered position in asserting that the position is so unique or complex that it can only be performed by an individual with a specialized degree. The duties of the proffered position, however, betray no such degree of complexity or uniqueness.

Analyzing marketing data, past marketing plans, and post-conference surveys in order to develop effective marketing programs and strategies, for instance, is an abstract description of generic duties of market research analyst positions in general, some of which, the *Handbook* indicates, may not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The record contains no other evidence to distinguish the proffered position from market research analyst positions that are not so complex or unique as to require a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO will consider the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty for the proffered position.<sup>2</sup>

The record contains the résumés of three people whom the petitioner's vice president asserted previously worked in the petitioner's marketing department, though she did not make clear whether they had worked in the proffered position. Those résumés state that those three people, [REDACTED] have bachelor's degrees in marketing, international business, and communications and media studies with an emphasis on journalism and advertising, respectively. Those résumés are not evidence that the petitioner requires a minimum of a bachelor's degree or the equivalent in a specific specialty. In fact, if those are the three people have worked in the proffered position for the petitioner, as the petitioner's vice president appeared to imply, that would be conclusive proof that the petitioner does not require a minimum of a bachelor's degree or the equivalent in a specific specialty for the proffered position.

The petitioner has not demonstrated that the proffered position meets the alternative 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.

Again, however, the nature of the duties attributed to the proffered position, far from being so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a minimum of a bachelor's degree or the equivalent in a specific specialty, appear to be the generic duties of a market research analyst position, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Nothing about analyzing marketing data, past marketing plans, and post-conference surveys in order to develop effective marketing programs and strategies makes clear that the nature of those duties is so specialized and complex that the knowledge they require is usually associated with a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

---

<sup>2</sup> While a petitioner may believe or otherwise assert that a proffered 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 occupation as 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 proffered 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 § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the submissions on appeal have not remedied that failure. 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.