

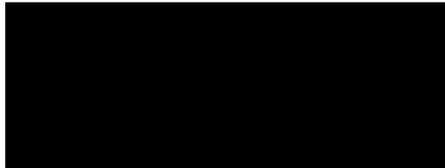
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

PUBLIC COPY



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Date: **MAY 04 2012**

Office: VERMONT 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 director of the 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 be denied.

The petitioner is engaged in the retail tourist trade, and seeks to employ the beneficiary as a market researcher. The petitioner, therefore, endeavors to classify the beneficiary 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 based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation. On appeal, counsel for the petitioner submits a brief and additional evidence and asserts that the director's decision was erroneous.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the RFE; (3) the director's denial letter; and (4) Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job 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 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires 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 [(2)] which requires 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, a proposed 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), 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.

On June 17, 2010, the director requested additional evidence. Specifically, the director’s RFE asked for documentary evidence regarding the existence of the petitioner and the nature and scope of its operations, such as, for example, photographs of the petitioner’s business in operation; affidavits corroborating the petitioner’s business activities; “any other evidence to support [the petitioner’s] claim that [it] is a bona fide employer and an ongoing business entity”; a copy of the relevant lease or rental agreement that applies to the location where the petitioner operates; a copy of its municipal business license; copies of recent tax returns; and “copies of company brochures, pamphlets, Internet

website, or any other printed work published by [the petitioner] which outlines in detail the products or services provided by [that] company.”

Subsequent to the petitioner’s timely reply to the RFE, the director denied the petition, finding that the evidence of record, as supplemented by the response to the RFE, did not establish that the petitioner had established any H-1B caliber work for the beneficiary for any definite period of time within the period specified in the petition.

The petitioner states that it is seeking the beneficiary’s services as a market researcher. In a May 10, 2010 letter of support, the petitioner asserted that it is “involved in the retail tourist trade in the French Quarter of New Orleans, Louisiana.” It claimed to require the services of the beneficiary as a market researcher, and indicated that his duties would be as follows:

In this position, [the beneficiary] will be responsible for researching market conditions to determine the company’s potential product sales and analyzing data on customer demographics, preferences, needs and buying habits to identify potential markets. The position will also mandate forecasting and tracking of marketing and sales trends for effective target advertising. The effectiveness of our advertising campaign will be measured by [the beneficiary], who will provide senior management with the information and proposals concerning promotion, distribution, design and pricing of company products.

The petitioner concluded by stating that the proffered position required the incumbent to possess at least a bachelor’s degree in business, marketing or a related field, and claimed that the beneficiary was qualified to perform the duties of the proffered position by virtue of his educational background, which the petitioner claimed is equivalent to a U.S. master’s degree in business administration.

At the outset, the AAO notes that, as obvious in the above quotation from the petitioner’s May 10, 2010 letter of support, the petitioner has described the duties of the proffered position in broad terms of generalized marketing-research functions that provide no insight into definite, non-speculative work that would actually engage the beneficiary for any portion of the multi-year period specified in the petition.

The AAO also finds that, contrary to counsel’s assertion (at page 6 of the brief on appeal) neither the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* nor the Job Zone and SVP codes assigned to the market researcher’s occupation indicate that market research positions comprise an occupational class that categorically requires at least a bachelor’s degree, or the equivalent, in a specific specialty.

Regarding educational requirements for market research analysts, the *Handbook* states:

Market research analysts need a bachelor’s degree in market research or a related field. Many have degrees in fields such as statistics, math, or computer science. Others have a background in business administration, one of the social sciences, or

communications. Courses in statistics, research methods, and marketing are essential for these workers; courses in communications and social sciences—such as economics, psychology, and sociology—are also important.

Many market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics, marketing, or a Master of Business Administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

See Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, 2012-13 Edition, "Market Research Analysts," <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-4> (last visited April 24, 2012).

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act,. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as business management and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty."^[1] Section 214(i)(1)(b) (emphasis added).

Here, although the *Handbook* indicates that a bachelor's or higher degree is required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that "others have a background in business administration." As noted above, 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 at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a market research analyst does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

[1] Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(b) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty.

Further, counsel also misconstrues the import of *O*NET* Summary Reports' Job Zone and SVP Codes. See the *O*NET* Online Help Center, at www.online.onetcenter.org/help/online/zones, for a discussion of Job Zone 4, which explains that this Zone signifies only that most but not all of the occupations within it require a bachelor's degree, and which further confirms that a Job Zone 4 designation for an occupation does not indicate any requirements for particular majors or academic concentrations. See also the Online Help Center at <http://www.onetonline.org/help/online/svp>, which shows that SVP coding is not meant to be indicative of the need for attainment of any particular educational level in any specific specialty.

Based upon its review of the related evidence, the AAO hereby adopts the director's summary of the documentary evidence provided in response to the RFE as not establishing that the petitioner would employ the beneficiary in marketing research for any cognizable portion of the period specified in the petition. Also, the AAO concurs with the director's conclusion that the record of proceeding before him at the time of his decision "[did] not establish that the job qualifies as a specialty occupation." Further, based upon its review of the totality of the evidence in this record of proceeding, including the submissions on appeal, the AAO finds that the petitioner has not overcome the basis of the director's denial. Accordingly, the appeal will be dismissed, and the petition will be denied.

The AAO acknowledges that the *Handbook*) indicates that market researchers may work in virtually every industry and business seeking to enhance the sales of its products and/or services. For example, regarding work environment of market research analysts, the *Handbook* states:

Market research analysts generally work alone at a computer, collecting and analyzing marketing data and preparing reports. Some, however, work directly with the public to collect information and data.

See Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, 2012-13 Edition, "Market Research Analysts," <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-3> (last visited April 24, 2012). Based on the above excerpt, market research analysts often work alone. Further, the AAO does not find that either the petitioner's industry or the petitioner's size preclude the possibility of its using the services of a marketing researcher. Rather, consideration of the *Handbook's* information on the marketing researchers occupation and the totality of the evidence in the record of proceeding, including the exclusively generalized evidence regarding duties that the beneficiary would perform and the quantum of evidence provided with regard to the nature and extent of the petitioner's business activities (including, but not limited to, the failure to submit, although requested, a current lease for the location where the work would be performed) leads the AAO to conclude that the petitioner failed to establish that it filed this petition on the basis of any market research work that would engage the beneficiary for any distinct portion of the period sought in the petition, and that the market research work that the beneficiary would allegedly perform would be such as to actually 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 required by section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

As previously noted, USCIS must examine the actual employment of an alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. However, the petitioner's description of the duties of its position is so generic that it is not possible to identify those tasks and, therefore, whether the position is that of a market research analyst. Further, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation -- employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

As another independent basis for dismissing the appeal, the AAO notes the petitioner's indication, in its letter of support dated May 10, 2010, that the proffered position that only requires "at a minimum a Bachelor's Degree in business, marketing, or a related field." It must be noted that the petitioner's claimed entry-requirement of at least a bachelor's degree in "one of a variety" of majors does not denote a requirement for a degree in a specific specialty. Furthermore, the claimed requirement of a degree in business for the proffered position, without specialization, 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 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 (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 in a specialized field of study or its equivalent. As discussed *supra*, 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. 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 at 147.

Again, the petitioner claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. As such, on this basis also, the AAO finds that the director's decision to deny the petition for failure to establish the proffered position as a specialty occupation was correct.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Even if the proffered position were a specialty occupation, which it is not, the beneficiary would not qualify to perform the duties of that specialty occupation based on his education credentials, because it has not been demonstrated that the beneficiary possesses a degree in a specialized field of study. For this additional reason also, the petition may not be approved.

Specifically, while an evaluation of the beneficiary's academic credentials prepared by Park Evaluations and Translations states that the beneficiary possesses the equivalent to a U.S. Master's degree in Business Administration, it fails to designate any specific business specialty. The AAO notes that a general degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Id.* Thus, even if the petitioner had demonstrated that the proffered position requires at least a bachelor's degree in a specific specialty or its equivalent, the petition could not be approved, because the petitioner failed to demonstrate that the beneficiary has taken courses or gained knowledge considered to be a realistic prerequisite to any specific specialty within the field of business. For this additional reason, the petition must be denied.

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 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be 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.

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