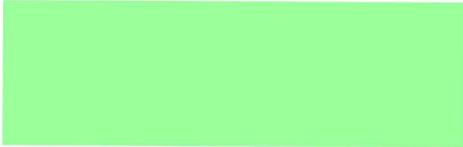




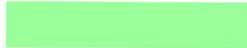
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUN 21 2013

OFFICE: VERMONT SERVICE CENTER

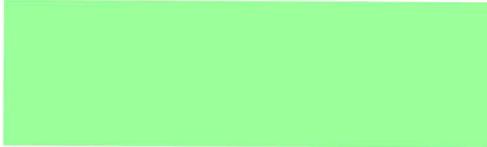
FILE: 

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 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,

Ron Rosenberg  
Acting 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 describes itself as a French restaurant and bakery. In order to employ the beneficiary in a position it designates as a market research analyst position, the petitioner seeks 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 the beneficiary is qualified to perform services in a specialty occupation. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

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.

As a preliminary matter, the AAO will discuss whether the proffered position qualifies as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."). In this matter, however, it appears the director did not determine whether the proffered position met the definition of a specialty occupation. Therefore, the AAO will first determine whether the proffered position is a specialty occupation.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

*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 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO finds that the petitioner's claim that a bachelor's degree is a minimum requirement for entry into 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 to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's degree 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 (1st Cir. 2007).

Accordingly, the petitioner's assertion that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that that degree be in any specific specialty, is tantamount to an admission that the proffered position is not in fact a specialty occupation. The petition must be denied on this basis alone.<sup>1</sup>

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<sup>1</sup> It is noted that the AAO concurs with the director's statement that the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* does not support the petitioner's contention that the proffered position qualifies for classification as a specialty occupation. While the *Handbook* indicates that a bachelor's

Even assuming, *arguendo*, that the proffered position qualifies for classification as a specialty occupation, the director correctly determined that the beneficiary is not qualified to perform the duties of such a specialty occupation. As noted above, 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 degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

A bachelor's degree does not, *per se*, qualify a beneficiary for employment in a specialty occupation. Rather, the position must require a degree in a specific specialty. *Cf. Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558,560 (Comm'r 1988). Further, the beneficiary must have a degree in that specific specialty. *See Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or

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or higher degree is typically required for market research analyst positions, 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." *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Market Research Analysts," <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-4> (last visited June 19, 2013.) Although a general-purpose bachelor's degree, such as a degree in business, 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.

- (C) (i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record contains documents showing that the beneficiary studied at [REDACTED] in [REDACTED]. Although her final transcript is not in the record, a diploma shows that she received a bachelor's degree in literature, with honors. Other documents show that she was enrolled for four semesters in the business administration program at [REDACTED] and that she earned 39 credits there, but not that [REDACTED] awarded her a degree.

The record contains an evaluation by [REDACTED] dated September 28, 2011, which states, with little analysis, that the beneficiary's bachelor's degree in literature and one year of education at [REDACTED] in the Master of Business Administration program is equivalent to a bachelor's degree in business administration.

The record contains another evaluation, dated April 12, 2012, prepared by the same evaluator, which reiterates that the beneficiary's education is equivalent to a bachelor's degree in business administration.

On November 21, 2011, the service center issued an RFE in this matter. In it, the service center requested, *inter alia*, that the petitioner submit additional evidence that the beneficiary qualifies for

employment in a specialty occupation position. In response to that RFE, the petitioner submitted the September 28, 2011 evaluation described above.

The director denied the visa petition on February 21, 2012, finding that the evidence submitted does not demonstrate that the beneficiary is qualified to work in a specialty occupation position.

On appeal, counsel submitted the April 12, 2012 evaluation and noted that both evaluations submitted show that the beneficiary has the equivalent of a bachelor's degree in business administration.

The AAO notes, initially, that the petitioner and counsel assert that the beneficiary is qualified to work in a specialty occupation position because her bachelor's degree in literature and additional education at [REDACTED] have been found to be equivalent to an otherwise undifferentiated bachelor's degree in business administration.

Business administration is a general term including both professional and nonprofessional activities. A degree in business administration alone is, consequently, insufficient to qualify the holder as a member of the professions unless the academic courses pursued and the knowledge gained are realistic prerequisites to a particular occupation within the broad field of business administration and unless that person is engaged, or intends to engage, in that occupation. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). An otherwise undifferentiated degree in business administration is not a degree in a specific specialty and cannot qualify one to work in any specialty occupation position. This is sufficient reason to dismiss the appeal and deny the visa petition. However, the AAO will continue with an analysis of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D), in order to further illustrate the petitioner's failure to demonstrate that the beneficiary is qualified, pursuant to the salient regulations, to work in a specialty occupation position.

The criterion of 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) requires "a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university." The only evidence pertinent to a U.S. degree pertains to a bachelor's degree in literature. That is not in any specific specialty closely related to market research analysis. The evidence does not satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

The record contains no evidence pertinent to any foreign degree. Therefore, the evidence does not satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The record contains no evidence that a license is required to work as a market research analyst in Maryland or, if it is, that the beneficiary has such a license. In either event, the evidence does not satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

The remaining subsection is 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). The record does contain evaluations stating that the beneficiary's education is equivalent to a bachelor's degree in business administration. As was observed above, however, an undifferentiated degree in business

administration is not a sufficient qualification for any specialty occupation position. The evidence does not satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The petition fails to establish that the beneficiary is qualified, pursuant to the salient regulations, to serve in any specialty occupation, let alone in a specialty occupation position for a market research analyst. The appeal will be dismissed and the visa petition denied on this basis.

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.