



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

Date: **MAY 06 2013**

Office: VERMONT 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]

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 stated that it is a "Rice Business." To employ the beneficiary in what it designates as a marketing manager 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 did not err in his decision to deny the petition on the specialty occupation issue. 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.

The issue on appeal is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 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. 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 which [(2)] 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, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the

criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *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.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a marketing manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-2021.00, Marketing Managers, from the *Dictionary of Occupational Titles (DOT)* maintained by the United States Department of Labor (DOL). The LCA further states that the proffered position is a Level I position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in information technology from a university in Pakistan, and was once enrolled in a master's degree program in management at a university in England. However, no evaluation of the beneficiary's foreign degree and education was submitted to USCIS. Furthermore, the petitioner failed to submit a description of the duties of the proffered position or any documentary evidence demonstrating that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Consequently, on February 18, 2011, 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 such as a detailed job description and documentation describing the petitioner's business.

In response, counsel submitted, *inter alia*, a copy of an undated job offer and counsel's own undated letter. The undated job offer states that the position the petitioner offered to the beneficiary is a "Marketing Manager" position, but does not otherwise describe the duties of the position.

In his own undated letter, counsel stated:

That, the beneficiary qualifies educationally and traditionally as well since the Petitioner does business in the products of his country like wise the petitioner has almost customers who knows the Afghan language and traditional products for the people who lives in United States but belongs to Afghan ties. Since the beneficiary has Master's Degree in Management from the prestigious institution of the UK. The beneficiary has strong grip of marketing and management as well and the strong aspect of the employment of the beneficiary is the bilingual communication skills for

what the beneficiary has to deal with the customers which will an assert for the progress of the petitioner's business. Bilinguality is itself comes within the ambit of SPECILITY OF OCCUPATION.

[Errors in the original].

Although counsel appeared to assert that the beneficiary is qualified for the proffered position, he did not state that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, let alone provide any evidence pertinent to that point.

The director denied the petition on June 2, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submitted a brief in which he states that a bachelor's degree is *not* required for the proffered position. Counsel states, *inter alia*, the following in his brief:

Although the Bachelors degree is not required for this job because this is a Food product Business and most of the customers belong from the Afghan culture and most of them Speak their native afghan language and business has customers from all over the USA Please see attached the Customers list as exhibit "B" and the company is expanding the operation of business therefore the beneficiary who has Master's degree and has strong grip on marketing adding further more the beneficiary also belong from the Afghan Culture. She not only knows the language but also knows the business expertise and our company indeed needs a person who is well qualified educationally but also should know The Afghan language Beneficiary pervious experience in the same filed makes her unique and important part for this business which will be the guarantee of the prosperity and business increase across the United States of America. Therefore, this kind of business comes under definition of "Specialty Occupation" for which the beneficiary is qualified. That, the Petitioner never employed anyone previously employed for the same position therefore did not submit evidence because our business does not require degree since the Petitioner is expanding business and beneficiary is skilled and qualified for this position.

\* \* \*

Yes, the nature of specified duties are so completed which only can be performed by a individual who has relevant experience and skills for this position although the degree is not require but experience id needed.

[Errors in the original].

Although the meaning of counsel's brief is not entirely clear, it is clear that he is asserting that a bachelor's degree is not required for the proffered position. Counsel has provided no evidence, and the petitioner and counsel have never even alleged, that the proffered position requires a minimum of a *bachelor's degree in a specific specialty* or its equivalent.<sup>1</sup> The assertion that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Furthermore, the AAO finds that despite the director's request for additional evidence demonstrating that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the record is devoid of substantial documentary evidence as to the specific duties of the proffered position. Given the lack of detail and corroborating evidence, the AAO cannot determine that the proffered position substantially reflects the duties of a marketing manager. The AAO notes that the record lacks any statement of the duties of the marketing manager position.

Thus, the record, as constituted, precludes a determination that the duties of the proffered position are those of a marketing manager. Based on the lack of documentary evidence and a statement of the proffered position's duties, the AAO has determined that the petitioner has failed to distinguish the proffered position from a position that does not qualify as a specialty occupation. Thus, there is no basis upon which it can be determined that the petitioner has demonstrated a need for a marketing manager and that the beneficiary will be performing the claimed duties of a marketing manager on a full-time basis here in the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Furthermore, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that “[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation.” Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Furthermore, there must be sufficient, corroborating evidence in the record that demonstrates not only actual, non-speculative employment for the beneficiary, but also enough details and specificity to establish that the work the beneficiary will perform for the petitioner will more likely than not be in a specialty occupation.

USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is

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<sup>1</sup> It is noted that the petitioner submitted a copy of a document with the petitioner's job posting for the proffered position; however, that job posting only states that the position requires a bachelor's degree without identifying the specific specialty.

seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1) and 103.2(b)(12). 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 the petitioner has failed to present sufficient, credible evidence of the actual job duties the beneficiary will perform, it has therefore failed to demonstrate that the occupation more likely than not requires a bachelor's or higher degree in a specific specialty or its equivalent as a minimum for entry. *See* INA § 214(i)(1). The petitioner also has not shown through submission of documentary evidence, that it meets any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not credibly shown that it requires a marketing manager and that the work requires a bachelor's degree in a specific specialty. Thus, the petitioner has not met its burden of proof in this regard, and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

As was noted above, counsel submitted evidence that the beneficiary received a bachelor's degree in information technology from a university in Pakistan, and was once enrolled in a master's degree program at a university in England. In his brief, counsel appears to rely on those credentials to show that the beneficiary is qualified to perform the duties of a specialty occupation.

If a petitioner seeks to rely on a beneficiary's foreign degree to show that the beneficiary has a minimum of a bachelor's degree in a specific specialty or its equivalent, 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) requires a determination that the foreign degree is equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. The record contains no evaluation of the beneficiary's foreign degree and education. As such, the beneficiary has not been shown, consistent with the salient regulation, to have a minimum of a bachelor's degree in a specific specialty or its equivalent, and has not been shown, therefore, to be qualified to perform services in any specialty occupation. The visa petition must be denied for this additional reason.

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 director's decision will be affirmed and the petition will be denied 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.