



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 21 2014**

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director (hereinafter "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.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a consulting service with six employees in the United States. In order to employ the beneficiary in what it designates as a part-time Administrative Service Manager position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The 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, we have 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.

We base our decision upon our 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 petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as 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, 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 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.

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an administrative service manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-3011, Administrative Service Managers from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a master's degree in business administration from [REDACTED]. The beneficiary's résumé states that the beneficiary previously received a bachelor's degree in accounting from the [REDACTED]. However, the record contains no evidence in support of that statement and no evaluation of that asserted degree in terms of its equivalence to a U.S. education and degree.

Counsel also submitted an employment agreement ratified by the petitioner and the beneficiary on March 28, 2013. The employment agreement contains the following description of the duties of the proffered position:

- Maintaining officer job operate effectively, proper handle this, manger must
- Supporting staff to successfully accomplish company goals and day to day operation.
- Client meeting—upon all the client's questions, manger need to explain to the client that the process of the law.

- Team (internal) meeting—finding the problems need result immediate, to helping consultant to research all the information needed in order keep it timely.
- Data management including gathering and analysis—examination the data record
- And update all latest information.
- Conference calls
- When company often face questions that they are incapable to answering or too busy to given the question, office manager must have capable to hold the client's attention and return the response later, Instead of losing the client attention.
- Office manger must be an effective communicators and be well- connected within the industry, moreover, manger will have focus to expend our industry areas , AD must maximum to cover areas we could have connection with more potential business possibility, to performing this, the manger must responsible as following job:
 - Having business sense to expending our business areas, searching the all possibilities that our company will have the chance to serve the people and company.
 - To attending communities service or activities on behalf of our company and to exposure our company's business in connection with all the people who may need our business in the future. This may include weekend meetings.

[Errors in the original]

The submissions with the visa petition did not indicate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, or, if it does, identify the specific specialty the degree must be in.

On May 2, 2013, 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. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, counsel submitted (1) an additional job description of the proffered position; (2) the petitioner's Form 941 Employer's Quarterly Federal Tax Returns (Quarterlies) for the last quarter of 2012 and the first quarter of 2013; and (3) an undated letter from [REDACTED]

The additional job description of the proffered position states the following about the proffered position:

Employees must have at least a baccalaureate degree and in this job may be responsible for managing various operations at a facility (i.e. food service, warehouse, accounting and finance, environmental health and fire safety.)

The job description also states:

Skills –

- Knowledge of the principles and techniques of administrative management including organization, planning, staffing, training, budgeting, and reporting.
- Knowledge of the principles and techniques of financial management.
- Knowledge of official planning and management.
- Knowledge of the principles of office management including organization, work flow, forms, supplies, equipment, and procedures relating to filing, record keeping, correspondence, mail, procurement, stock, keeping, and duplicating.
- Knowledge of training and supervisory techniques.
- Ability to instruct, direct, and evaluate employees.
- Ability to obtain and analyze facts and precedents in making administrative decisions.
- Ability to establish and maintain effective relationships with government officials, private industry officials, professional personnel, and others.

Areas of Responsibility –

- Analyzes and organizes office operations and procedures and plans office layouts. Researches and develops resources that create timely and efficient work flow.
- Assists, implements and offers recommendations to the administrator regarding new administrative or office procedures, including: information management, record keeping and retrieval systems, requisition of supplies and other clerical services.
- Maximizes office productivity through proficient use of appropriate software application. Establishes uniform correspondence procedures and style practices.
- Composes, edits, authors and organizes a variety of documents, (correspondence, memos etc.) and materials for publication or dissemination under the guidance of Administration.
- Assists the Administrator on daily schedule maintenance and setting appointments.
- Works with administration in coordinating the scheduling team, preparing materials, tracking all schedule notes, and preparing schedules for review.

The petitioner's Quarterlies show that the petitioner had four employees during the last quarter of 2012 and one employee during the first quarter of 2013.

The undated letter from [REDACTED] is on the petitioner's letterhead. Although it does not identify [REDACTED] position with the petitioner, we observe that [REDACTED] is identified in the New York State records pertinent to corporations as the petitioner's CEO and has signed numerous documents in the record as the petitioner's principal, including the visa petition, Forms G-28 recognizing counsel, the beneficiary's employment agreement, and checks drawn on the petitioner's bank account. The LCA, which [REDACTED] also signed, identifies [REDACTED] as the petitioner's office manager.

[REDACTED]'s undated letter states that the petitioner is a "consulting company that assists clients with personal asset analysis, foreign investments and, more specifically, real estate investing and sales in the United States and mainland China." The letter also provides the following additional description of the duties of the proffered position:

- supervising clerical and administrative personnel;
- developing changes to policies and procedures to improve operations and business organization;
- planning budget for contracts, equipment and supplies;
- monitoring the office to ensure that it remains safe, secure and well maintained;
- overseeing the maintenance of the computer and telephone operating systems; and
- ensuring that the company complies with environmental, health and security standards and compliance with any government regulations.

That letter further states that the proffered position requires a minimum of a bachelor's degree because, in it, the beneficiary would have daily contact with attorneys and successful and demanding business leaders. It does not state that the degree must be in any specific specialty.

The director denied the petition on November 6, 2013, 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 supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submitted documents that purport to have been produced by the beneficiary. On the Form I-290B appeal, counsel stated:

Petitioner appeals the denial of the H1-B petition submitted by [the petitioner], a Brooklyn, New York, based consulting company, which seeks to hire the Beneficiary . . . as a permanent, part-time Administrative Service Manager, at a salary of \$32,760.00 per year. [The beneficiary] holds a Master's of Business Administration Degree from [REDACTED] earned in December, 2012.

As previously indicated, [the petitioner] works with premier Brooklyn and Manhattan based law firms that have almost exclusive [sic] Chinese clientele. Having a native

Chinese born Manager who has extensive administrative management skills is essential to the growth and development of [the petitioner]. If granted H1-B status, [the beneficiary's] job duties will include the supervision of clerical and administrative personnel, planning budgets for contracts, equipment and supplies, developing policies and procedures to improve [the petitioner's] operations and business organization. Having a manager with at least a baccalaureate degree is essential for the management position, and is a minimum requirement. [The beneficiary will utilize the skills he developed through his education and prior work experience to fulfill the needs of the unique and challenging position. His importance is much more than what is noted in the November 6, 2013 denial.

In today's competitive business world, it is essential to employ a talented and innovative leader such as [the beneficiary]. [The beneficiary's] skills and innovative ideas are essential to the growth of [the petitioner], and it is respectfully submitted that it is error to deny him H-1B status, especially as he is the specific type of individual needed in this global work environment of today. [The petitioner] works with highly successful individuals from China and these clients expect [the petitioner] to employ highly education [sic] and dedicated management members such as [the beneficiary].

Although counsel asserted that the proffered position requires a bachelor's degree, he did not indicate that the requisite degree must be in any specific specialty.

IV. SPECIALTY OCCUPATION ANALYSIS

We observe that some of the evidence submitted appears to conflict with statements on the visa petition. On the visa petition, signed March 25, 2013 and submitted April 3, 2013, the petitioner stated that it then had six employees in the United States. However, the petitioner's Quarterlies show that the petitioner had four employees during the last quarter of 2012 and one employee during the first quarter of 2013, when [redacted] signed the instant visa petition. The record contains no evidence to support the assertion that the petitioner has ever had six employees, and contains evidence that directly contradicts the [redacted] assertion that, when he signed the visa petition, the petitioner had six employees.

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, 591-92 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* At 591-592.

Further, the petitioner has never alleged that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Specifically, the initial submissions with the visa petition did not attribute any specific educational requirement to the proffered position. The additional job description and [REDACTED] letter, both submitted in response to the RFE, indicate that the proffered position requires a bachelor's degree, but not that the degree must be in any specific specialty. On appeal, counsel stated that a bachelor's degree is a requirement of the proffered position, but not that the requisite degree must be in any specific specialty.

The requirement of an unspecified bachelor's degree is inadequate to establish that a position qualifies as a specialty occupation position. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of an unspecified bachelor's degree does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

In his undated letter, [REDACTED] stated that the proffered position requires a minimum of a bachelor's degree because, in it, the beneficiary would have daily contact with attorneys and successful and demanding business leaders. The requirement of a college degree with no specific major, for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. *Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm'r. 1988).

In this case, the petitioner has indicated that the educational requirement of the proffered position may be satisfied by an otherwise unspecified bachelor's degree. As such, the petitioner has not asserted that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. The director's decision must therefore be affirmed and the petition denied on this basis alone.

We further observe that the assertion that the petitioner has more than one employee is material to the petitioner's case. The beneficiary's employment contract states that one of his duties is, "Supporting staff to successfully accomplish company goals and day to day operation." The job description submitted in response to the RFE states that the proffered position requires, "[the] [a]bility to instruct, direct, and evaluate employees. [REDACTED] undated letter and counsel's statement on the Form I-290B both state that, in the proffered position, the beneficiary would supervise clerical and administrative personnel.

The job description submitted in response to the RFE also indicates that the petitioner would assist the Administrator on "daily schedule maintenance" and "setting appointments" and work with administration in "coordinating the scheduling team, preparing materials, tracking all schedule notes, and preparing schedules for review."

The duties attributed to the proffered position imply that the petitioner has employees subordinate to the beneficiary whom he is to supervise, and at least one employee to whom the beneficiary is

subordinate, and whom the beneficiary would assist. However, as was observed above, the petitioner's Quarterlies contradict the implication that the beneficiary has multiple employees. They suggest, to the contrary, that the duties attributed to the proffered position are not an accurate account of the duties the beneficiary would perform if the instant visa petition were approved.

Yet further, the specific nature of the petitioner's business has not been revealed. The undated letter of [REDACTED] states that the petitioner is a "consulting company that assists clients with personal asset analysis, foreign investments and, more specifically, real estate investing and sales in the United States and mainland China." He further stated, "The petitioner works with a few premier Brooklyn and Manhattan based law firms." Counsel repeated that assertion on appeal, and also stated that the beneficiary would supervise clerical and administrative personnel. Further, the job description submitted in response to the RFE indicates that, in the proffered position, the beneficiary "may be responsible for managing various operations at a facility (i.e. food service, warehouse, accounting and finance, environmental health and fire safety)." Absent a concrete and consistent description of the nature of its business, the petitioner is unable to establish the substantive nature of the work the beneficiary would perform within the context of the petitioner's business.¹

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.

¹ We observe, though, that the petitioner stated, on the LCA, that the proffered position is a Level I Administrative Service Manager from (O*NET). The U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which we routinely rely for the educational requirements of particular occupations, indicates that Administrative Service Manager positions do not, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent. A Level I Administrative Service Manager position is less likely than other Administrative Service Manager positions to require a minimum of a bachelor's degree in a specific specialty or its equivalent. If the evidence submitted had demonstrated the proffered position to be a Level I Administrative Services Manager position, then the visa petition likely would have been denied as not being for a specialty occupation position. If, on the other hand, the proffered position were demonstrated to be a specialty occupation position, then the visa petition, which is supported by an LCA that is valid only for employment of a Level I Administrative Services Manager, would likely be denied as not supported by a corresponding LCA.

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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 additional reason.

V. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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