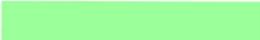




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 24 2014** OFFICE: CALIFORNIA 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 (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.

Thank you,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn. The matter will be remanded to the director for action consistent with this decision.

On the Form I-129 visa petition, the petitioner describes itself as an exhibit and event marketing industry established in 1999.<sup>1</sup> In order to employ the beneficiary in what it designates as a program coordinator, southwest division 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 on July 18, 2013, concluding that the petitioner failed to establish that the Labor Condition Application (LCA) corresponds to the petition. Counsel subsequently filed an appeal. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. We reviewed the record in its entirety before issuing our decision.

#### I. FACTUAL AND PROCEDURAL HISTORY

In the petition signed on March 15, 2013, the petitioner indicates that it is seeking the beneficiary's services as a program coordinator, southwest division on a full-time basis.<sup>2</sup> In the March 13, 2013 letter of support, the petitioner states that the beneficiary will be responsible for the following duties:

In this position, [the beneficiary] would be responsible to provide support to Account Executive and Account Management teams in the execution of athletic environments. Designed Environments reflect the heart and the soul of client's company and evoke a meaningful connection with audience and indelibly impress them with a distinct brand personality. In this position, [the beneficiary] would assist with sports marketing, plan and schedule programming and event coverage and coordinate team work of the Southwest Division while participating in kick-off and

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<sup>1</sup> It must be noted for the record that in the Form I-129 (page 5) the petitioner described its type of business as "Exhibit and Event Marketing Industry." Thereafter on the form (page 17), the petitioner designated its business operations under the North American Industry Classification System code 541613 – "Marketing Consulting Services." In the letter of support, the petitioner stated that its academic requirement "is the general minimum requirement in the *hotel industry* for the position (emphasis added)." No explanation for the variances regarding the petitioner's business operations was provided.

<sup>2</sup> The petitioner stated that the beneficiary currently serves in Optional Practical Training as an account coordinator for the petitioner and that he performs the same duties as the proffered position. No explanation was provided for the variance in the job title.

status meetings for each specific sports event. As an active member of a Program team and along with the Account Executive, Program Manager, Graphic Designer and other professionals, [the beneficiary] would ensure effective communication of timelines, deadlines, deliverables and pertinent details. He would act as a liaison to client, fulfilling requests, adjusting requirements and record changes. [The beneficiary] would assist in client/services data collection and recording, facilitate client viewings and manage client files.

More specifically, [the beneficiary] would: (i) coordinate activities between the following teams of Southwest Division (project management, design engineering, strategic planning and design, fabrication and installation, graphic design and production, interior design and rollouts); (ii) coordinate activities of personnel engaged in graphic design and Program management; (iii) check completed program logs for accuracy and conformance with regulations; (iv) confer with directors and production staff to discuss issues such as budget policies, production; (v) develop ideas based on client needs and suggest to the Account Executive; and (vi) establish work schedules and assign work to team members upon Program initiation.

Further, the petitioner states, "The nature of the analytical and highly technical tasks which must be performed requires skills which are usually associated with the attainment of at least a Bachelor's degree in Sports Administration, Sports Marketing, or a closely related field, or the equivalent in education and/or experience."

In addition, the petitioner submitted an LCA in support of the instant H-1B petition. The petitioner indicated that the occupational classification for the proffered position is "Producers and Directors" – SOC (ONET/OES Code) 27-2012, at a Level I (entry level) wage. The petitioner indicated on the Form I-129 that the position falls under the Dictionary of Occupational Titles code 141, which is designated for "Commercial Artists: Designers and Illustrators, Graphic Arts."

In support of the petition, the petitioner also submitted, in part: (1) the petitioner's Consolidated Financial Statements and Independent Auditors' Report for December 31, 2012 and 2011; (2) an excerpt entitled "Summary Report for: 27-2012.03 – Program Directors" from the Occupational Information Network (O\*NET); and (3) an excerpt entitled "Producers and Directors" from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*), 2012-13 Edition.

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on April 16, 2013. The director outlined the evidence to be submitted.

On July 5, 2013, the petitioner responded to the RFE. In a document entitled "Program Coordinator, Southwest Division," the petitioner provided a revised job description of the proffered position, along with the percentage of time the beneficiary would spend performing the duties of the position, as follows:

DUTY BREAKDOWN:		
<ul style="list-style-type: none"><li>Responsible to provide support to Account Executive and Account Management teams in the execution of athletic environments*</li></ul>	19 hours	41%
<ul style="list-style-type: none"><li>Assist with sports marketing, plan and schedule programming and event coverage and coordinate teams [sic] work of the Southwest Division while participating in kick-off and status meetings for each specific sports event.</li></ul>	3 hours	7.5%
<ul style="list-style-type: none"><li>As an active member of Program teams with Account Executive, Program Manager, Graphic Designer and other professionals, [the beneficiary] would ensure effective communication of timelines, deadlines, deliverables and pertinent details*</li></ul>	3 hour [sic]	7.5%
<ul style="list-style-type: none"><li>Act as a liaison to client, fulfilling requests, adjusting requirements and record changes</li></ul>	1 hours [sic]	2.5%
<ul style="list-style-type: none"><li>Assist in client/services data collection and recording, facilitate client viewings and manage client files.</li></ul>	6 hours	16%
<ul style="list-style-type: none"><li>Coordinate activities between the following teams of Southwest Division (project management, design engineering, strategic planning and design, fabrication and installation,</li></ul>	2 hour [sic]	5%

graphic design and production, interior design and rollouts);		
• Coordinate activities of personnel engaged in graphic design and Program management;	2 hour [sic]	5%
• Check completed program logs for accuracy and conformance with regulations;	1 hours [sic]	2.5%
• Develop ideas based on client needs and suggest to the Account Executive;	2 hours	5%
• Establish work schedules and assign work to team members upon Program initiation.	1 hours [sic]	2.5%
Total:	40 hours weekly	100%

In response to the RFE, the petitioner also submitted: (1) an article regarding the petitioner, along with photographs; (2) information regarding the petitioner's "Permanent Environments" for [REDACTED] (3) an organizational chart; (4) a letter from [REDACTED] and (5) job vacancy announcements.

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. The director denied the petition on July 18, 2013. Counsel submitted an appeal of the denial of the H-1B petition.

## II. LABOR CONDITION APPLICATION

In the decision denying the petition, the director stated that (based upon the petitioner's job description) the position being offered to the beneficiary was not a producers/directors position as indicated in the LCA. The director found that (1) the LCA was for an occupational category that was different than the position offered to the beneficiary, and (2) it could not be found that the LCA would correspond to the proffered position.

Upon review of the job descriptions submitted by the petitioner, we note that many of the duties have been copied virtually verbatim from the tasks for the occupation "Program Directors" – SOC

(ONET/OES Code) 27-2012.03 as described in the O\*NET Code Connector, as well as other Internet sources.<sup>3</sup>

The director's decision did not mention that the petitioner's job description recited many of the job duties from the O\*NET Code Connector for "Program Directors." It appears that this information was unknown to the director and would have been relevant in determining the petitioner's eligibility for the benefit sought. The matter will therefore be remanded to the director for further review.

### III. SPECIALTY OCCUPATION

Beyond the decision of the director, we note that the record of proceeding does not establish 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 applicable 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 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:

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<sup>3</sup> The SOC (ONET/OES Code) code 27-2012.03 provides an additional level of detail for "Program Directors" within the occupational category "Producers and Directors."

See U.S. Dep't of Labor, Emp't & Training Admin., Occupational Information Network (O\*NET) Code Connector, Program Directors – SOC (ONET/OES Code) 27-2012.03 on the Internet at <http://www.onetonline.org/link/summary/27-3012.03> (last visited July 22, 2014).

- (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), the 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.

In ascertaining the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. 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."

Upon review of the record of proceeding, we note that the wording of the duties as provided by the petitioner for the proffered position are taken almost verbatim from the O\*NET Code Connector and various job vacancy announcements found on the Internet. These types of general descriptions may be appropriate when defining the range of duties that may be performed within an occupational category, but they fail to adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations and, thus, generally cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's business operations, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will "provide support to Account Executive and Account Management teams in the execution of athletic environments." The majority of the beneficiary's time will be spent performing this task (41%); however, the statement fails to provide any particular details regarding the demands, level of responsibilities and requirements necessary for the performance of this duty. Furthermore, the term "provide support" could cover a range of activities and does not provide any insights into the beneficiary's day-to-day work.

Furthermore, according to the petitioner, the beneficiary will spend approximately 33.5% of his time "assisting" and "coordinating" in various tasks. More specifically, the petitioner claims the beneficiary will "assist" with several duties, such as "assist with sports marketing, plan and schedule

programming and event coverage and coordinate team work of the Southwest Division" and "assist in client/services data collection and recording." Notably, the words "assist" and "coordinate" provide limited details regarding the beneficiary's actual duties, and the statements fail to convey the specific tasks that the beneficiary will perform. Thus, as so generally described, the description does not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. These statements fail to provide sufficient specifics regarding the beneficiary's role and they do not provide any information as to the complexity of the job duties, the amount of supervision required, and/or the level of judgment and understanding required to perform the duties.

The overall responsibilities for the duties of the proffered position contain general functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's business operations. Furthermore, the petitioner did not provide sufficient documentation to substantiate the claimed job duties and responsibilities of the proffered position.

It is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described by the petitioner, we find, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire three-year period requested, so as to persuasively support the claim that the work would require the theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent).

The petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position qualifies as a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The petitioner's assertions with regard to the position's educational requirement are conclusory and unpersuasive, as they are not credibly supported by the job descriptions or substantive evidence.

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 satisfies 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.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation.

#### IV. CONCLUSION AND ORDER

The matter will be remanded to the director for further review and issuance of a new decision.

**ORDER:** The director's July 18, 2013 decision is withdrawn. The matter is remanded to the director for review and issuance of a new decision.