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U.S. Citizenship
and Immigration
Services

DATE: **JAN 28 2015** OFFICE: CALIFORNIA 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 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 travel agency established in [REDACTED]. In order to continue to employ the beneficiary part-time for "30-35 hours" per week in what it designates as a corporate writer 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 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.¹

As will be discussed below, we have determined that the director did not err in her 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

¹ A [REDACTED] attorney signed the visa petition and submitted a Form G-28, Entry of Appearance as Attorney or Accredited Representative, indicating that he prepared the visa petition and represented the petitioner. A different [REDACTED] attorney signed a Form G-28 that was submitted with the appeal in this matter, indicating that he now represents the petitioner. All submissions will be considered, but today's decision will be furnished only to the petitioner and to the petitioner's present attorney. Further, both attorneys will be referred to as "counsel," without distinction, in this decision.

- (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 a "Corporate Writer" position, and that it corresponds to Standard Occupational Classification (SOC) code and title 27-3043, Writers and Authors 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 bachelor's degree in language and literature from [REDACTED], where she majored in English language. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in English language and literature.

Counsel also submitted: (1) a copy of the beneficiary's résumé; (2) an evaluation, dated September 9, 2010, of the proffered position; (3) a letter, dated August 20, 2013, from the petitioner's president; and (4) counsel's own letter, dated August 23, 2013.

The beneficiary's résumé states that she worked for companies in South Korea, then a different company in the United States, prior to commencing work for the petitioner in August of 2009.²

The petitioner's president's August 20, 2013 letter states that the petitioner specializes in selling travel services to Koreans vacationing in the United States and to the Korean community in [REDACTED] and elsewhere in the United States.³ It further states:

- In support of the company's tour functions, [the beneficiary] will continue to write, edit, and produce original multi-media tour and travel features articles, reports and publications employing journalistic/web writing styles and incorporating photography, graphics and video where relevant to her writing. She will continue to create and draft written materials and brochures that are clear, concise, and grammatical adheres [sic] to the principles of good composition and is [sic] presented in a manner appropriate to our intended traveling audiences. [The beneficiary] will continue to draft and coordinate corporate communications tour projects, including corporate and sponsored communications, directories, brochures, media, print, and radio advertisements and more. She will continue to draft and write news features and columns regarding popular travel destinations, travel promotions and activities, as well as media advertisements emphasizing our service features, benefits, and unique value propositions in order to sell in today's competitive market. She will continue to edit, format, and oversee the publication and distribution of the company's corporate materials, including published articles, formal business proposals, public relations materials, corporate fact sheets, press releases, and other promotional materials that will help develop credibility and favorable images regarding our services by utilizing a variety of media outlets and sources. She will update and revise previously written materials with updated company information and keep the materials current. [The beneficiary] will continue to proofread and review materials, obtain necessary approvals and provide support to other departments (35%);
- [The beneficiary] will continue to focus on preparing promotional materials in terms of travel specials and seasonal specials. In other works, she drafts insightful and strategic promotional and advertising materials that will best promote the client's travel objectives and plans. These materials include company

² The beneficiary's résumé appears to contain an error. It states that the beneficiary worked for a South Korean company from "Dec. 2009 – Mar. 2009," then for a company in the United States from "April 2009 – July 2009." As stated, those two periods would overlap and, therefore, conflict. However, we believe that the beneficiary intended to say that she began work for that South Korean company in December of 2008. We attach no significance to what is apparently a typographical error.

³ The petitioner's president did not state that the proffered position has any educational requirement.

profiles, product portfolios, trend reports, presentations and client-specific promotional news releases or articles. [The beneficiary] will continue to write, review, and edit completed drafts of promotional and advertising materials, both in English and Korea [sic], for accuracy and consistency, and make changes to improve overall expression and vocabulary to ensure the materials convey the desired messages and information. She creates engaging, well-organized technical and non-technical text for use in such traveling venues such as web sites, newsletters, brochures, and even video productions (30%)

- [The beneficiary] will continue to prepare documents to facilitate international communications between our clients, traveling vendors, and travel partners in South Korea. Those documents include business letters and proposals. She will continue to prepare these reports covering not only our company's services, but on emerging traveling markets, new business opportunities and popular travel sites.
- [The beneficiary] spends time editing, formatting, and overseeing the publication and distribution of our corporate materials, including articles, formal business proposals, public relations materials, corporate fact sheets, press releases, and other promotional materials that help develop credibility and favorable images regarding our services by utilizing various media outlets and sources (25%);
- [The beneficiary] will continue to analyze special traveling requirements, compare and contrast the written requirements with the company's requirements to assess feasibility, assemble technical data, develop source material and consult with other staff involved in the preparation of draft materials. She will continue to facilitate dialogue between colleagues to better understand written communication requirements and collaborate with graphic artists, photographers, and others in content production. She will continue to serve as liaison with other writers, editors and media producers to assist in ensuring that communications materials, publications and reports conform to relevant sponsor requirements and complement established communications strategy (5%); and
- [The beneficiary] will continue to be assisting in all speech writing, public presentations, and information programs and advising the marketing manager and upper management with regard to the information to be included in promotional materials, travel fairs, travel industry reports (5%).

The position evaluation expresses the evaluator's opinion that, "the position of Corporate Writer . . . requires the services of someone with advanced training through a Bachelor's program in English or a closely related field."

In his own August 23, 2013 letter, counsel cited the position evaluation and the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as evidence that the proffered position qualifies as a specialty occupation position.

On December 14, 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) two vacancy announcements placed by the petitioner; (2) six vacancy announcements placed by other companies; (3) a declaration, dated December 26, 2013, from [REDACTED] the operations manager of [REDACTED]; and (4) counsel's own letter, dated January 8, 2014.

The two vacancy announcements placed by the petitioner are both for "Corporate Writer" positions, and each states that the position requires a "BS/BA Degree in English Language and Literature or related."

[REDACTED] December 26, 2013 declaration states that hiring a corporate writer is common practice in the travel industry, that employing a corporate writer is essential for [REDACTED] that it is common practice to hire only corporate writers with a bachelor's degree in "English Language & Literature or related," and that [REDACTED] has always employed a corporate writer with a bachelor's degree in "English Language & Literature or related."

In his January 8, 2014 letter, counsel observed that the beneficiary was previously granted H-1B status, and that the instant visa petition is an extension petition. Counsel asserted that the evidence submitted demonstrates that the proffered position is a specialty occupation position and also stated:

The qualifications of a Corporate Writer include more than just creative writing and marketing skills; in addition, he/she must be familiar with the wide range of services and products the business is selling, understand how businesses operate efficiently and remain profitable, comprehend demands and prices for services, utilize and apply precise editing and marketing skills, be aware of pricing strategies, must be able to communicate effectively, etc. Such skills, at a minimum, can only be attained through a formal education from a four-year college or university program in English Language and Literature or related.

The director denied the petition on May 16, 2014, 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 (1) a letter, dated June 10, 2014, from [REDACTED] signing as president of [REDACTED] (2) an evaluation of the proffered position, dated June 11, 2014, prepared by [REDACTED], an associate professor of journalism at [REDACTED] at [REDACTED] and (3) a brief, dated June 12, 2014.

In his June 10, 2014 letter [REDACTED] asserted that his company, [REDACTED] has employed corporate writers and stated:

A candidate who is expected to perform the duties of a Corporate Writer in our competitive industry must have at least a baccalaureate degree in English Language & Literature or related can handle this position because of the knowledge required to perform the complex duties involved and to be able to write concisely and persuasively. [sic]

In her June 11, 2014 evaluation of the proffered position, [REDACTED] asserted that in her opinion the duties of the proffered position "require preparation at a Bachelor's Degree in Communications, English, or a related area level at a minimum."

In his brief, counsel again asserted that the evidence presented demonstrates that the proffered position qualifies as a specialty occupation position and cited the *Handbook* in support of that assertion.

IV. ANALYSIS

As a preliminary matter, we note that counsel's January 8, 2014 letter contained a description of skills required in the proffered position and asserted that obtaining a bachelor's degree in English language and literature or a closely related subject is the only path that leads to those skills. Some of the skills discussed were maintaining familiarity with the goods and services a company offers, understanding how businesses operate efficiently and remain profitable, comprehending demands and prices for services, and being aware of pricing strategies.

We observe that a curriculum in English language and literature is not closely related to marketing, familiarity with a company's product line, understanding efficient business operations, or understanding demand and pricing strategies. Counsel's assertion that those topics can only be grasped by someone with a bachelor's degree in English language and literature is not supported by the evidence.

[REDACTED] December 26, 2013 declaration states that hiring a corporate writer is common practice in the travel industry. [REDACTED] asserted that his company, [REDACTED] has employed corporate writers.

The petitioner is a travel agency. We observe that travel agencies typically earn a commission by booking air travel, rental cars, and other travel services on behalf of suppliers. Notwithstanding the

assurances of the petitioner, [REDACTED] and [REDACTED] we find insufficient evidence to support the proposition that travel agencies commonly employ corporate writers.

The petitioner's business is slightly different from most other travel agencies in the United States in that its target audience is the Korean. As such, they may be unable to rely upon travel brochures provided by cruise lines, package tour operators, and other vacation destination service providers. However, rewriting those brochures for the Korean market is a job for a translator, rather than a corporate writer. Further we find insufficient evidence that the task of rewriting those brochures for the Korean-speaking market would encompass 30 hours of employment per week for three years.

The petitioner also states that the beneficiary would compose business correspondence. The record, however, contains insufficient evidence to demonstrate that businesses in general, or travel agencies in particular, employ a corporate writer to compose their business correspondence or, if they did, that the position would require a minimum of a bachelor's degree in a specific specialty or its equivalent, or anything more than basic secretarial skills.

In any event, we observe that the petitioner, a travel agency, proposes to employ the beneficiary for at least 30 hours per week composing travel brochures, advertising copy, correspondence, etc. The evidence submitted, however, is insufficient to demonstrate that the petitioner would be able to utilize the services of a writer for even 30 hours per week. Therefore, the substantive nature of the duties the beneficiary would actually perform if the visa petition were approved has not been demonstrated.

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.

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 reason.

V. CONCLUSION

We recognize that this is an extension petition. The director's decision does not indicate whether she reviewed the prior approvals of the previous nonimmigrant petitions filed on behalf of the beneficiary. If the previous nonimmigrant petitions were approved based on the same evidence

contained in the current record, however, those approvals would constitute material and gross error on the part of the director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990).

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.