

May 14, 2018

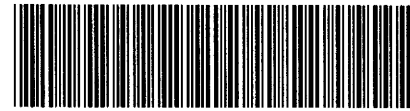
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
California Service Center
Laguna Niguel, CA 92607-0590

TATA CONSULTANCY SVCS LTD
c/o AMIT JINDAL RESIDENT MGR HR
9201 CORPORATE BLVD STE 320
ROCKVILLE, MD 20850



U.S. Citizenship
and Immigration
Services



WAC1716350314

Form I-129, Petition for a Nonimmigrant Worker

DECISION

On May 19, 2017, your organization, TATA CONSULTANCY SVCS LTD, filed a Petition for a Nonimmigrant Worker (Form I-129), with U.S. Citizenship and Immigration Services (USCIS), seeking to classify JAIN, ANSHUL (beneficiary) as a temporary worker in a specialty occupation (H-1B) under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (INA).

INA § 101(a)(15)(H)(i)(b) provides, in part, for the classification of a qualified nonimmigrant:

...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)..., who meets the requirements for the occupation specified in section 214(i)(2)..., and with respect to whom the Secretary of Labor determines and certifies...that the intending employer has filed with the Secretary an application under section 212(n)(1).

You seek a change in previously approved employment and requested that USCIS extend the beneficiary's stay.

You stated on the Form I-129 that you are a software products and services business with 17415 employees. You seek to employ the beneficiary as an Architect from September 20, 2017 to September 19, 2020.

USCIS reviewed the initial record of evidence for eligibility in accordance with the INA and Title 8, Code of Federal Regulations (8 CFR) and could not determine whether you had established eligibility for the benefit sought. Accordingly, USCIS issued a Request for Evidence (RFE) on August 8, 2017. On October 10, 2017, you submitted a response.

After careful review and consideration of the entire record, based on a preponderance of the evidence, the petition will be denied for the reasons discussed below.

Specialty Occupation

The only issue to be discussed is whether the position offered to the beneficiary qualifies as a specialty occupation.

INA § 214(i)(1) defines "specialty occupation" as follows, in relevant part:

...the term "specialty occupation" means 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.

8 CFR § 214.2(h)(4)(ii) defines a specialty occupation to mean:

...an occupation which 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 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 CFR § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must 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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

A specialty occupation is defined as one that requires the theoretical and practical application of a body of highly specialized knowledge and the 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 regulations at 8 CFR § 214.2(h)(4)(iii)(A) further clarify how a position can qualify as a specialty occupation. However, it should be noted that 8 CFR § 214.2(h)(4)(iii)(A) must logically be read together with INA § 214(i)(1) and 8 CFR § 214.2(h)(4)(ii). Hence, the criteria stated in 8 CFR § 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 CFR § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. To avoid this illogical result, 8 CFR § 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 consistent with INA § 214(i)(1) and the regulation at 8 CFR § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 CFR § 214.2(h)(4)(iii)(A) to mean not just any bachelor's or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified nonimmigrants 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 bachelor's 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.

USCIS does not use a title, by itself, when determining whether a particular position qualifies as a specialty occupation. The specific duties of the proffered position, combined with the nature of your business operations are factors that USCIS considers. USCIS must examine the ultimate employment of the beneficiary and determine whether the position qualifies as a specialty occupation. The critical element is not the title of the position or 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 bachelor's or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the INA.

Each position is evaluated based upon the nature and complexity of the actual job duties to be performed with that specific employer. In addition, the beneficiary's obtainment of a degree in a related area does not guarantee the position is a specialty occupation. Further, performing specialty occupation duties that are incidental to the primary functions is insufficient to establish that the duties to be performed qualify as a specialty occupation. Through detailed descriptions of the beneficiary's duties, USCIS may discern the nature of the position and whether the position requires the theoretical and practical application of a body of highly specialized knowledge attained through attainment of at least a bachelor's degree or higher in a specific discipline.

Subsequent to the filing of the petition, you were requested to provide additional evidence to include a detailed description of the actual duties to be performed by the beneficiary on a day-to-day basis, and evidence to establish that the position meets the standards to qualify as a specialty occupation.

You described the duties of the proffered position as follows:

- Analyze and infer the existing functionality for the MDM application across the interfaces to be replaced or updated with MDM components based on the discussions with the application SME(s) and the Business Analyst. Conclusively finalize the requirement details for the implementation. (20%)
- Based on the finalized requirements, identify and create a Solution Design (document) approach to implement the code and hence get the same reviewed and approved by the stakeholders. (25%)
- Develop the ETL and MDM mappings and also the related IDD (Informatica Data Director) components to implement the proposed functionality as per the approved Solution Design. (30%)
- Perform the Unit Testing for the developed interfaces and validate with the test cases received from the business stake holder team(s). (15%)
- Coordinate with business team in testing these interfaces on the functional aspect and test cases post completion of the system integration. (10%)

When attempting to establish whether the position is a specialty occupation, you must show that the position meets at least one of four criteria at 8 CFR § 214.2(h)(4)(iii)(A). USCIS will now discuss each criterion in turn:

1. A bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position

USCIS recognizes the *Occupational Outlook Handbook* (OOH), a publication of the United States

Department of Labor, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. You have certified a Labor Condition Application (LCA) with the Department of Labor (DOL) that the proffered position is an Architect within the Computer Occupations, all other category. The OOH (last modified: January 30, 2018) does not contain detailed profiles for the Computer Occupations, all other category and corresponding to the Standard Occupational Classification code 15-1199.

The OOH states the following about these occupations:

Data for Occupations Not Covered in Detail

Although employment for hundreds of occupations is covered in detail in the *Occupational Outlook Handbook*, this page presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2016 employment, the May 2016 median annual wage, the projected employment change and growth rate from 2016 to 2026, and education and training categories are presented.

Thus, the narrative of the OOH reports that there are some occupations for which only summary data is prepared but detailed occupational profiles are not developed. It appears that for at least some of the occupations, little meaningful information could be developed.

When the OOH does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation.

In response to USCIS' request, you indicated that since the DOL's O*Net Online website reported that the position is a Computer Systems Engineer/Architect and falls under Job Zone Four, a bachelor's degree or higher in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position.

A designation of Job Zone Four indicates that a position requires considerable preparation. It does not, however, demonstrate that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in INA § 214(i)(1) and 8 CFR § 214.2(h)(4)(ii). O*Net explains that a Job Zone Four signifies only that most but not all of the occupations within it require a bachelor's degree. Further, there is no evidence that a Job Zone Four occupation requires particular majors or academic concentrations. Therefore, your citation to information on O*Net is not probative that the proffered position is a specialty occupation.

- 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**

USCIS will discuss this criterion in two parts as follows:

- a. Degree requirement is common to the industry in parallel positions among similar organizations**

The first alternative prong requires that you submit evidence that the degree requirement (a bachelor's degree or higher or its equivalent in a specific specialty) is common to the industry in parallel positions among similar organizations.

Factors often considered by USCIS when determining the industry standard include: whether the OOH reports that the industry requires a degree; whether the industry's professional associations have made a degree a minimum entry requirement; or whether letters or affidavits from firms or individuals in the industry attest that such firms routinely employ and recruit only degreed individuals.

The conclusions about a degree requirement for Computer Occupations, all other positions as shown in the OOH were discussed in the previous section.

You submitted several job postings. The following table lists the employer, whether the employer is similar to your organization, the title of the position and the degree requirement for each job posting:

Employer	Similar to Petitioning Entity	Job Title	Degree Requirement
Amazon Corporate LLC	Cannot determine whether this entity is similar to petitioning entity	Systems Development Engineer	Bachelor's degree in Computer Science or other technical degree and/or related experience
Wal-mart Stores, Inc.	Cannot determine whether this entity is similar to petitioning entity	Advanced Systems Engineer-ISD	Bachelor's degree in Computer Science, Information Technology, Engineering, Computer Information Systems, or related field; or 5 years' experience in information technology or related field
Wal-mart Stores, Inc.	Cannot determine whether this entity is similar to petitioning entity	Sr. Technical Architect	Bachelor's degree in Information Technology, Computer Science, or related field; or 9 years' experience in information technology or related field
Wal-mart Stores, Inc.	Cannot determine whether this entity is similar to petitioning entity	Senior Architect	Bachelor's degree in Computer Science or related field

To satisfy this first alternative prong and establish that the employers who placed the job postings are similar to your organization, you must show that your organization and those employers share similar characteristics. When determining whether your organization and an advertising employer share similar characteristics, such factors may include information regarding the nature or type of organization; when pertinent, the particular scope of operations; and as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient to claim that an organization is similar and in the same industry without providing a basis for such an assertion.

Although you submitted four job postings, the job postings are not sufficient evidence of a degree requirement being common to the industry in parallel positions among similar organizations. Further, you did not provide sufficient evidence for USCIS to determine whether any of job postings are from employers who are similar to your organization.

Two of the job postings from Wal-mart Stores, Inc. do not require a bachelor's degree or higher or its equivalent in a specific specialty. Instead, the job postings state experience may be sufficient for the position.

As such, you have not shown that the degree requirement is common to the industry in parallel positions among similar organizations.

b. Complexity and uniqueness of the proffered position

The second alternative prong allows you to show that the proffered position is so complex or unique that it can be performed only by an individual with a bachelor's degree or higher or its equivalent in a specific specialty. In reviewing this second alternative prong, USCIS looks to the Form 1-129 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. Through detailed descriptions of the beneficiary's duties, USCIS may discern the nature of the position and whether the position requires the theoretical and practical application of a body of highly specialized knowledge attained through attainment of at least a bachelor's degree or higher or its equivalent in a specific specialty.

You submitted a breakdown of the job duties for the proffered position along with the percentage of time that the beneficiary will spend on the various duties. However, the submitted list of duties is generic in nature and provides no further detail as to the unique or complex nature of the proffered position. This breakdown is not viewed as sufficient to establish that the proffered position is more unique or complex than other similar positions within the same industry. Without additional evidence showing the unique or complex nature of the position, or how this position differs from other similar positions within the same industry, you have not met this criterion.

Although the record contains a letter by Information Technology Industry Council dated November 5, 2012 stating that its fifty member companies normally require a bachelor's degree in certain specialties for parallel positions, you did not provide evidence that those companies are similar to your organization; that they have actually hired any workers for those positions; or that they have required any degrees prior to hiring the workers. Simply going on record with unsupported statements without documentary evidence does not meet the burden of proof. *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972).

As such, you have not shown that this position involves duties seen as either unique or complex so that only an individual with a bachelor's degree or higher in a specific specialty could perform them.

3. The employer normally requires a degree or its equivalent for the position

This third criterion requires that you show that you normally require a bachelor's degree or higher or its equivalent in a specific specialty for the proffered position. USCIS looks to your employment practices as well as information regarding employees who previously held the position.

You submitted three of your own job vacancy announcements:

- Solution Architecture-Network & Infrastructure (109368) – Desired Qualifications: Bachelor's degree in Computer Application;
- AWS Solution Architect (109052) - Desired Qualifications: Bachelor's degree in Computer Science; and
- Enterprose Architect (109019) - Desired Qualifications: Bachelor's degree in Computer Science

(Bachelor's preferred, or equivalent relevant business experience).

A preference for certain fields is not a requirement that the applicants possess such degrees to qualify. Thus, those job announcements do not show that you normally require degrees in a specific specialty for those positions.

Your letter of support states the proffered position requires at least a bachelor's degree in electrical engineering or a related field. USCIS reviewed the open job postings on your website for positions that have similar duties as the proffered position. This review shows that you do not normally require a bachelor's degree or higher or its equivalent in a specific specialty for the proffered position. Instead, the following job postings from your website show that you would hire an applicant with experience being sufficient for the position:

- <https://ibegin.tcs.com/iBegin/jobs/117540J>
Architect (117540) – experience
- <https://ibegin.tcs.com/iBegin/jobs/117546J>
ETL Informatcia (117546) – experience
- <https://ibegin.tcs.com/iBegin/jobs/118928J>
PDH business analyst (118928) – experience
- <https://ibegin.tcs.com/iBegin/jobs/119276J>
Data Architect (Technical) (119276) – experience

As such, you have not shown that you normally require a degree or its equivalent in a specific specialty for the position.

4. The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree

The fourth criterion requires you to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree or higher or its equivalent in a specific specialty.

The record contains insufficient information to establish the specialized and complex nature of the proffered position.

As discussed above, the evidence does not distinguish the difference between the duties to be performed by the beneficiary and those normally performed by an Architect, and how the duties of the proffered position are more specialized and complex. As such, there is insufficient documentation on record to establish that the duties to be performed are so specialized and complex that the knowledge required to perform the duties would be associated with the attainment of a bachelor's or higher degree in a specific specialty.

As such, you have not shown that 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 bachelor's or higher degree.

You have not met any of the four criteria enumerated at 8 CFR § 214.2(h)(4)(iii)(A). Therefore, you have not shown that the proffered position is a specialty occupation.

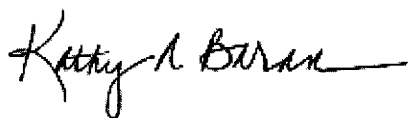
The burden of proof to establish eligibility for the benefit request rests with you. Here, that burden has not been met.

Consequently, the petition is denied for the above stated reason.

If you disagree with this decision, you may appeal to the Administrative Appeals Office (AAO) by filing a Notice of Appeal or Motion (Form I-290B) within 30 days (33 days if by mail) of the date of this decision. Alternatively, you may use Form I-290B to submit a motion to reopen or reconsider. For the latest information on filing location, fee, and other requirements, please review the Form I-290B instructions at <http://www.uscis.gov/forms>, call our National Customer Service Center at 1-800-375-5283, or visit your local USCIS office.

The Small Business Regulatory Enforcement and Fairness Act established the Office of the National Ombudsman (ONO) at the Small Business Administration. The ONO assists small businesses with issues related to federal regulations. If you are a small business with a comment or complaint about regulatory enforcement, you may contact the ONO at <http://www.sba.gov/ombudsman> or phone 202-205-2417 or fax 202-481-5719.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy A. Baran". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kathy A. Baran
Director, California Service Center

