



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7952722

Date: JUNE 17, 2020

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner, a footwear manufacturer, seeks to temporarily employ the Beneficiary as a “computer systems analyst” under the H-1B nonimmigrant classification for specialty occupations.¹ The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the California Service Center denied the petition, concluding that the record did not establish that the proffered position qualifies as a specialty occupation. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.² We review the questions in this matter *de novo*.³ Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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) largely restates this statutory definition but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

¹ Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

² Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

³ See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). We construe the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. ANALYSIS

The Petitioner submitted a list of nine duties with its initial filing and expanded upon those duties in response to the Director’s request for evidence (RFE) as well as on appeal. We will not repeat all the duties and descriptions here but have reviewed and considered each one. The Petitioner claims that the duties of the proffered position require a minimum of a master’s degree in computer science or a related field in order to perform them.

Upon review of the record in its totality and for the reasons set out below, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record (1) does not describe the position’s duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁴

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we consider the information contained in the

⁴ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* regarding the duties and educational requirements of the wide variety of occupations it addresses.⁵

On the labor condition application (LCA)⁶ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category of "Computer Systems Analysts" corresponding to the Standard Occupational Classification code 15-1121.⁷ Though the *Handbook* reports that "[m]ost computer systems analysts have a bachelor's degree in a computer-related field,"⁸ it also recognizes that a range of disparate degrees may be suitable for entering into this occupation. For example, the *Handbook* states that "[a]lthough many computer systems analysts have technical degrees, such a degree is not always a requirement" and that "[m]any analysts have liberal arts degrees and have gained programming or technical expertise elsewhere."⁹ The *Handbook* does not clarify the type of technical degree or liberal arts degree (whether associate or bachelor's) and does not suggest how much programming or technical expertise would generally be required for an individual with a non-computer related degree to enter into the occupation.

The imprecise and varied information in the *Handbook* regarding the ways to enter into this occupation does not support a conclusion that there is categorically a normal minimum educational requirement to enter the occupation. Because the *Handbook* indicates that some employers accept less than a bachelor's degree, and that this lesser degree may even be in a non-specific discipline, such as liberal arts, the *Handbook* does not describe the normal minimum educational requirement for the occupation in a categorical manner.¹⁰ Absent support from the *Handbook*, or other persuasive source, the Petitioner then must demonstrate that its particular position is among the computer systems analyst positions for which a bachelor's degree in a specific specialty, or its equivalent, is normally required. As we discuss in further

⁵ We do not maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. Nevertheless, to satisfy the first criterion, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁶ A petitioner submits the LCA to DOL to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

⁷ The Petitioner classified the proffered position at a Level II wage. A wage determination starts with an entry-level wage (Level I) and progresses to a higher wage level (up to Level IV) after considering the experience, education, and skill requirements of the Petitioner's job opportunity. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://fledatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

⁸ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Computer Systems Analysts, <https://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Jun. 17, 2020).

⁹ *Id.*

¹⁰ See also *Altimetrik Corp. v. Cissna*, No. 18-10116, 2018, WL 6604258, at *6 (E.D. Mich. Dec. 17, 2018) (also noting that because the *Handbook* "makes it clear that a degree in a computer-related field is not required" for these positions, "USCIS [was] entitled to deference in its finding that systems analysts are not required to have a bachelor's degree in a specific specialty").

detail in the following sections, the Petitioner has not established that its position meets these specialty occupation requirements.

On appeal, the Petitioner argues that the “range of educational credentials” outlined in the *Handbook* does not preclude a finding that the position qualifies as a specialty occupation under this criterion. The Petitioner states that U.S. Citizenship and Immigration Services (USCIS) must examine the fields of study identified by the *Handbook* and compare it to the job duties to be performed. The Petitioner further states that requiring the Petitioner, as opposed to USCIS, to establish the connection between the position duties and the various fields of study would impose a standard of proof above preponderance of the evidence. While it is within our purview to undertake such an examination, it remains the Petitioner’s burden to provide sufficient evidence to support such a connection. Here, we note that the Petitioner appears to confuse the burden of proof with the standard of proof. While the standard remains a preponderance of the evidence, the burden of proof to establish eligibility, and therefore how the range of educational credentials relates to the duties of the position, must remain with the Petitioner.

In support of its argument, the Petitioner cited to DOL’s Occupational Information Network (O*NET) summary report for “Computer Systems Analysts” (SOC code 15-1121.00). The O*NET Summary Report does not establish that a bachelor’s degree *in a specific specialty*, or the equivalent, is normally required. It provides general information regarding the occupation, but it does not support a conclusion that the proffered position requires a bachelor’s degree in a specific specialty, or the equivalent. Instead, O*NET assigns these positions a “Job Zone Four” rating, which states “most of these occupations require a four-year bachelor’s degree, but some do not.” Moreover, the Job Zone Four designation does not indicate that any academic credentials for Job Zone Four occupations must be directly related to the duties performed.

In addition, the specialized vocational preparation (SVP) rating designates this occupation as 7 < 8. An SVP rating of 7 to less than (“<”) 8 indicates that the occupation requires “over 2 years up to and including 4 years” of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, experience, and formal education. The SVP rating also does not specify the particular type of degree, if any, that a position would require.¹¹ Further, although the summary reports provide the educational requirements of “respondents,” it does not account for 100% of the “respondents.” Moreover, the respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Furthermore, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty. For all of these reasons, O*NET does not establish the proffered position as a specialty occupation.

The Petitioner has not provided sufficient documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

¹¹ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

B. Second Criterion

The second criterion presents two, alternative prongs: “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[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry establish that such firms “routinely employ and recruit only degreed individuals.”¹²

The Petitioner has not submitted any evidence that the degree requirement is common to the Petitioner’s industry. We acknowledge the Petitioner’s assertion via the opinion letter provided by [REDACTED] [REDACTED] Professor of Computer Science at [REDACTED] University, which states that a minimum of a bachelor’s degree in computer science or a related area that is directly connected to the job duties is “the typical standard industry-wide.” [REDACTED]’s statement alone, absent corroborating evidence in the record, is insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

The Petitioner has not provided sufficient probative evidence to establish that a bachelor’s degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor’s degree in a specific specialty, or its equivalent.

When determining whether a position is a specialty occupation, we look at whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge

¹² See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989) (considering these “factors” to inform the commonality of a degree requirement)).

attained through at least a baccalaureate degree in a specific discipline. Upon review of the totality of the record, we conclude that the Petitioner has not sufficiently explained or documented why the proffered position is so complex or unique that a bachelor's degree in a specific specialty is required. A crucial aspect of this matter is whether the Petitioner has submitted sufficient and consistent evidence describing the proffered position such that we may discern the nature of the position.

The Petitioner stated that the position involves the implementation and customization of Oracle NetSuite ERP software which will enable the Petitioner to optimize its business operations, including its e-commerce platform. The Petitioner seeks to employ the Beneficiary to perform this work within the company rather than engaging NetSuite directly or obtaining help from outside consulting companies. The Petitioner lists a series of position duties, states the education and knowledge required to perform the duties, and then identifies why the Beneficiary meets those requirements. In so doing, the Petitioner does not explain why the claimed education and knowledge is required. Absent this explanation, it cannot be concluded that the position duties require the theoretical and practical application of specialized knowledge attained through at least a baccalaureate degree in a specific discipline.

For instance, the Petitioner states that the Beneficiary will “[d]evelop a secure and scalable B2C checkout engine module using the suitecommerce extension framework and implement a caching layer using the Apache Ignite that can be used as a side cache or computing system that will help in reducing the system load and increasing the speed of the system.” The Petitioner has not, however, explained why developing this module using a third-party framework and third-party tools requires specialized knowledge that can be gained only in a master's degree program for computer science. Because the uniqueness or complexity of the work is not readily apparent from the Petitioner's descriptions, the Petitioner must provide an explanation to support its claims.

Another example is that the Beneficiary will, “[a]nalyse the system logged dataset using big data techniques to find the point of interest in our system and gather the data from the stakeholders to evaluate the business requirements and use the logged dataset and the gathered requirements to implement the solutions using the suitecloud IDE.” Here again, the Petitioner does not explain why analyzing datasets, using big data techniques, or evaluating business requirements utilizes specialized knowledge attained through a master's degree program in computer science. As stated in the *Handbook*, a person may enter the occupation with a variety of different educational credentials and may obtain technical training elsewhere. For this reason, the Petitioner must adequately substantiate its statements that “the job duties are so complex [] that only a person with the requisite master's degree can competently perform the duties.”

The proffered position's duties involve significant usage of programming languages, frameworks, databases, and various other tools. Many of the named technologies appear in O*NET as typical for positions falling within the computer systems analyst occupational category. If use of these technologies appears across positions falling within the computer systems analyst occupational category, even in those positions that do not require at least a bachelor's degree in a specific specialty, the mere usage of these technologies would not establish that the work is specialized. Therefore, the Petitioner must demonstrate how its particular position is one of the computer systems analyst positions that *does* require specialized knowledge to use these technologies. The Petitioner does not explain, for example, why this knowledge could not be learned through third-party certifications, a

computer science bootcamp, or other technological training. As such, we cannot conclude that the knowledge needed to use the technologies to perform the duties of the proffered position must be attained through a bachelor's degree or higher in computer science, let alone a master's degree.

We further note that the proffered position has duties that appear to fall within a combination of O*NET occupations. Specifically, the duties pertaining to application interfaces and making them compatible with various devices, as well as the overall development of an e-commerce website appear to span various occupational categories including "web developers." Other duties appear to fall within "software developers, applications" and "software developers, systems software." In such a case, the Petitioner should select the occupational category with the highest prevailing wage, which in this case is "software developers, systems software."¹³

We further note that in its initial letter, the Petitioner referred to the proffered position as a "developer" when it wrote that a "Full Stack Developer" is a specialty occupation. Documents in other parts of the record indicate that the Beneficiary's current role with the Petitioner is that of a "Full Stack Developer." Moreover, the Petitioner writes that the Beneficiary's current position is "nearly identical" to the proffered one. On appeal, the Petitioner provided printouts and articles about Oracle NetSuite and various computer science concepts. One article states that once installed, hosted and maintained by NetSuite, "the system is ready to be implemented by a web developer." As such, significant questions arise as to whether the proffered position is best categorized as a computer systems analyst. Because the position duties appear to be equally, if not more properly, classified in another occupational category, this raises questions as to whether the LCA corresponds to the petition as required.¹⁴ The Petitioner must resolve this ambiguity in the record with independent, objective evidence pointing to where the truth lies.¹⁵

We return to the letter from [redacted] whose opinion raises further questions concerning the appropriate occupational category. [redacted] concluded that "it is clear that this is not as much of a development position;" however, he offered this conclusion after discussing work pertaining to the proffered position's software development life cycle duties. He then stated that the proffered position "is designed to work on the software side at a higher level than normal developers as the focus is on ensuring the tight integration with the business needs." Paradoxically, [redacted] identified only three of the nine duties, totaling 38% of the proffered position's workload, as focusing on business needs. He stated that the other duties focus more on software development.

As the percentage of time suggests, it does not appear that the focus on business needs outweighs the software development duties. Furthermore, the *Handbook* specifically states that the occupational category of software developers includes the duty to "[a]nalyze users' needs and then design, test, and develop software to meet those needs"¹⁶ and that web developers "[m]eet with clients or management to discuss the needs and design of a website."¹⁷ Therefore, an emphasis on business needs does not

¹³ See [https://www.flcdatcenter.com/OesQuickResults.aspx?code=15-1133&area=\[redacted\]&year=19&source=1](https://www.flcdatcenter.com/OesQuickResults.aspx?code=15-1133&area=[redacted]&year=19&source=1) (last visited Jun. 17, 2020).

¹⁴ 20 C.F.R. § 655.705(b)

¹⁵ *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

¹⁶ See <https://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm#tab-2> (last visited Jun. 17, 2020).

¹⁷ See <https://www.bls.gov/ooh/computer-and-information-technology/web-developers.htm#tab-2> (last visited June. 17, 2020).

necessarily negate a conclusion that some duties fall within a developer based occupational category. Finally [] wrote that according to the Petitioner, 60% to 70% of time in this position is devoted to development work. In addition to raising further doubts as to whether the LCA corresponds to and supports the petition, the foregoing inconsistencies in [] statements undermine his credibility in this matter.

[]s also stated that he discussed with the Petitioner “the question of wanting a Master’s Degree as part of the requirement for this position.” He noted that the Petitioner determined this minimum qualification based upon the “extensive use of NetSuite and the requirement for a deep understanding of the complex needs of the company with respect to the complex software.” Given that neither NetSuite nor its interplay with the Petitioner’s business would be taught in a master’s degree program for computer science, the Professor clarified that:

A recent graduate from a four-year program may not specifically have expertise in that software but would know the general philosophy of programming and software systems and would be able to develop a rapid understanding of such a tool. [] If in the future, the job shifted to require a different framework or a different language, that same graduate could shift in an agile fashion without needing to go back to school or take a course.

First, the term “four-year program” does not support the Petitioner’s stated requirement for a master’s degree because it appears a bachelor’s degree would be sufficient. Second, if a course could impart the skill or knowledge needed to use a different framework or programming language, this would also appear to negate the Petitioner’s stated minimum qualification for a master’s degree in computer science. The foregoing demonstrates that the Petitioner’s minimum educational qualifications appear to be based on a preference for a specific individual who understands its business needs, rather than a requirement arising from the position duties themselves. It is well established that a requirement merely to obtain what an employer perceives as a higher caliber employee does not establish eligibility. The record must establish that a petitioner’s stated degree requirement is not a matter of preference but is necessitated instead by performance requirements of the position.¹⁸ However, [] and the Petitioner have not established this necessity.¹⁹

The Petitioner claims that the Beneficiary is well-qualified for the position and references his qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a particular beneficiary, but whether the position itself requires at least a bachelor’s degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks

¹⁸ See *Defensor*, 201 F.3d at 387-88; Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee does not establish eligibility.”)

¹⁹ We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.* Here, the opinion presented does not offer consistent analysis of the duties or and why the duties require at least a bachelor’s degree in a specific specialty. We hereby incorporate our discussion of []s opinion into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history.

The Petitioner did not submit evidence of previous or current employees who have served in the proffered position and it appears to be the first time the Petitioner has hired for the proffered position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner 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 baccalaureate or higher degree in a specific specialty, or its equivalent.

Although some tasks may connote a requirement of familiarity with general computer science principles, including knowledge of third-party technologies, the record is insufficient to establish that the duties require anything more than a few basic courses and a broad educational background. While a few such courses may be beneficial in performing certain duties of the position, the Petitioner, who bears the burden of proof, has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

For the same reasons we discussed under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), we conclude that the Petitioner has not established that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). We incorporate our earlier discussion and analysis on this matter.

Consequently, the Petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

III. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.