



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

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

In Re: 10344065

Date: JULY 8, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, a provider of health insurance products, seeks to temporarily employ the Beneficiary as an “associate consultant” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). 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 Vermont Service Center Director denied the petition, concluding that the Petitioner had not established that the proffered position is a specialty occupation. On appeal, the Petitioner asserts that the Director erred and that the proffered position is a specialty occupation.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 and adds a non-exhaustive list of fields of endeavor.

II. ANALYSIS

For the reasons discussed below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, as a result of the Petitioner's own requirements, the proffered position does not meet the statutory or regulatory definition of a specialty occupation.

The record must establish that the performance of the duties of the proffered position requires both the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree *in a specific specialty*, or its equivalent, as the minimum for entry into the occupation. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). In other words, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Here, the Petitioner indicated in the initial filing and again in response to the Director's request for evidence (RFE), that the minimum education required for the proffered position is a "Bachelor's degree in Healthcare Policy and Management with a focus in Business; Business Administration with a focus in Healthcare Policy and Management, or a related field."²

In response to the Director's request for evidence (RFE), the Petitioner submitted a letter from [REDACTED], who similarly concludes that the duties of the proffered position require at least "a bachelor's degree in Healthcare Policy and Management with a focus in Business; Business Administration with a focus in Healthcare Policy and Management, or a related field." The Petitioner asserts on appeal that the professor's "expert opinion testimony is based on sufficient facts/data such that he is familiar with the position in question at [the Petitioner's] and that the [professor] himself, as a professor of more than 15 years, is recognized as an authority within the field of Business Administration." We carefully evaluated the professor's assertions in support of the instant petition but, for the following reasons, determined the letter does not have significant weight in this matter.

The professor does not discuss the duties of the proffered position in any substantive manner beyond what was detailed in the Petitioner's letter. Rather, he quotes, then paraphrases the duties and description of tasks provided by the Petitioner.³ Further, there is no indication that the professor conducted any research or studies pertinent to the educational requirements for such positions (or

¹ 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.

² The Petitioner also discusses the Beneficiary's previous coursework for the purpose of correlating the need for the Beneficiary's education with the associated job duties of the position. However, we are required to follow long-standing legal standards and determine first, whether the proffered position qualifies for classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

³ It appears as though the professor used a template with conclusory findings and generic analysis to support the Petitioner's particular position as a specialty occupation. The lack of cogent analysis specific to nature of the Petitioner's position strongly suggests that the professor was asked to confirm a preconceived notion as to the required degrees, not objectively assess the proffered position and opine on the minimum bachelor's degree required, if any.

parallel positions) in the Petitioner's industry. The professor does not reference, cite, or discuss studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation. Rather, the professor opines "I have had ample opportunity to observe the distinctions that underlie different hierarchal roles and business functions across firms experiencing differing stages and forms of growth as well as observe the staffing infrastructures and reasonable requirements for positions in companies across a wide range of industries." Notably, the professor does not discuss the *Petitioner's* staffing infrastructure and organizational hierarchy within his analysis of the proffered position.⁴ It is not apparent that he conducted any research regarding the claimed specialization and complexity of the proffered position within the construct of the Petitioner's business operations in order to render an objective conclusion regarding the associated education requirements for the position, if any, beyond studying the Petitioner's letter of support.

For the reasons discussed, we find that the opinion letter provided lends little probative value to the matter here. As a matter of discretion, we may 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, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'"). For the sake of brevity, we will not address other deficiencies within the professor's analyses of the proffered position.

On appeal, the Petitioner asserts that it has "demonstrated that the duties of this position are so specialized and complex that performing them requires a bachelor's degree or equivalent in the specific, specialized field of Healthcare Policy, Business Administration, or a related field." However, the Petitioner's stated minimum requirements, for instance – that a bachelor's degree in business administration – alone indicates that the proffered position is not in fact a specialty occupation.

We conclude the Petitioner's claim that a bachelor's degree such as business administration is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a conclusion that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). Specifically, the judge explained in *Royal Siam*, 484 F.3d at 147, that:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not

⁴ The professor also appears to confuse *the ability* of a degreed person to qualify for – and be competent in – performing the duties of the proffered position with a degree requirement *in order to* perform the duties within the analyses presented in his opinion letter.

justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

We acknowledge that in satisfying the specialty occupation requirements both the Act and the regulations require a bachelor's degree in a specific specialty, or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. However, in promulgating the H-1B regulations, the former INS made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 56 Fed. Reg. 61,111, 61,112 (Dec. 2, 1991) (to be codified at 8 C.F.R. pt. 214). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty, or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.* The issue here is the Petitioner's requirement of a general bachelor's degree such as business administration for the proffered position, which does not constitute a bachelor's in a specific specialty or its equivalent.⁵

For all of these reasons, the Petitioner has not demonstrated that the proffered position requires anything more than a general bachelor's degree. As explained above, the statutory and regulatory definition of a specialty occupation requires a degree in a specific specialty that is directly related to the proposed position.

As a result, it is unnecessary to address the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4). We acknowledge that the Director concluded the evidence was insufficient to establish that the position qualified as a specialty occupation under at least one of the criteria in 8 C.F.R. § 214.2(h)(4)(iii)(A).⁶ On appeal, the Petitioner asserts that the proffered position meets criterion (4) of

⁵ Section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii).

⁶ The regulations provide that the offered position must also meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

8 C.F.R. § 214.2(h)(4)(iii)(A), and does not challenge the Director's determination of ineligibility under criteria (1), (2), or (3) of 8 C.F.R. § 214.2(h)(4)(iii)(A). However, even if the Petitioner were to demonstrate that it satisfied one of the listed criteria, this would not result in this petition's approval, as it still has not shown that the proffered position satisfies the statutory or regulatory definition of a "specialty occupation." *See* section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). The statutory definition constitutes the primary requirement for a position to qualify as a specialty occupation. Only after this antecedent requirement has been met, may a petitioner move to demonstrate how it may satisfy one of the supplementary criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

III. CONCLUSION

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. In this matter, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

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- (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.