



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

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

In Re: 10159845

Date: JULY 24, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, an orthodontic product supply and technology development company, seeks to temporarily employ the Beneficiary as an “operations research analyst” 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 Director of the Vermont Service Center denied the petition, concluding that the evidence of record does 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. 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 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . .” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires “theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) 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 section 214(i)(1) of the Act, but adds a non-exhaustive list of fields of endeavor. In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the proffered position must meet one of four criteria to qualify as a specialty occupation position.<sup>1</sup> Lastly,

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<sup>1</sup> 8 C.F.R. § 214.2(h)(4)(iii)(A) must be read with the statutory and regulatory definitions of a specialty occupation under

8 C.F.R. § 214.2(h)(4)(i)(A)(1) states that an H-1B classification may be granted to a foreign national who “*will perform services in a specialty occupation . . .*” (emphasis added).

Accordingly, to determine whether the Beneficiary will be employed in a specialty occupation, we look to the record to ascertain the services the Beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor’s degree or higher in a specific specialty or its equivalent. Without sufficient evidence regarding the duties the Beneficiary will perform, we are unable to determine whether the Beneficiary will be employed in an occupation that meets the statutory and regulatory definitions of a specialty occupation and a position that also satisfies at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The services the Beneficiary will perform in the position determine: (1) the normal minimum educational requirement for entry into 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. 8 C.F.R. § 214.2(h)(4)(iii)(A).

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act. 8 C.F.R. § 214.2(h)(4)(i)(B)(2). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

## II. PROFFERED POSITION

The Petitioner seeks to employ the Beneficiary as an “operations research analyst.” In the initial letter submitted in support of the petition, the Petitioner described the duties and responsibilities of the proffered position as follows:

- Undertake analysis for the efficient and effective operation of material flow to support production needs.
- Collect and analyze data on the timely and accurate inventory flow of raw good to all production departments, making recommendations to the Director of Operations for the plan, release and shipment of materials between operating plants.
- She will assist with inter-plant inventory planning and scheduling and analyze inventory contract processes with foreign governments.
- She will work to establish daily processes/procedures for all inventory related tasks working closely with production and purchasing to ensure proper levels of inventory for current demand.

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section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). 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”).

- She will continually keep the director of Operations apprised on the effects of various courses of action to take in order to address inventory and manufacturing problems.

The Petitioner stated that it requires “at a minimum a Bachelor’s of Business, with emphasis in Logistics and/or Supply Chain Management, but a Masters of Business Administration is preferred.”

In its response to the Director’s request for evidence (RFE), the Petitioner expanded on these duties and indicated the percentages of time the Beneficiary would devote to each duty.<sup>2</sup>

### III. ANALYSIS

Upon review of the record in its totality, we conclude that the Petitioner has not sufficiently established the services in a specialty occupation that the Beneficiary would perform during the requested period of employment, which precludes a determination of whether the proffered position qualifies as a specialty occupation under sections 101(a)(15)(H)(i)(b), 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(i)(A)(1), 8 C.F.R. § 214.2(h)(4)(ii) and (iii)(A).<sup>3</sup> Specifically, the record (1) does not describe the position’s duties with sufficient detail to demonstrate the substantive nature of the proffered position; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Operations Research Analysts” (corresponding to the Standard Occupational Category code 15-2031), with a Level I wage.<sup>4</sup>

A crucial aspect of this matter is whether the Petitioner has sufficiently described the duties of the proffered position such that we may discern the nature of the position and whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. When determining whether a position is a specialty occupation, we look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the performance of those duties within the context of that particular employer’s business operations.

On a fundamental level, the Petitioner has not provided sufficient information regarding its business operations that would delineate its organization, and the Beneficiary’s position within its overall organizational hierarchy. The Petitioner, a provider of orthodontic supplies and custom laboratory services, states having manufacturing plants in the United States and maintaining distribution centers in Europe, Australia, South Africa, Mexico, China and Japan. Within these business confines, the

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<sup>2</sup> For the sake of brevity, we will not quote the expanded version of the duties provided in the RFE response; however, we have closely reviewed and considered them.

<sup>3</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. Although we may not discuss every document submitted, we have reviewed and considered each one.

<sup>4</sup> 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).

Petitioner states that as an operations research analyst, the Beneficiary is “responsible for its supply chain management and logistics,” and spends 30% of her time being “aware of [the regulatory] requirements” of the various countries. The Petitioner also states that the Beneficiary works “closely with production and purchasing to ensure proper levels of inventory for current demand” and that her “recommendations affect all areas of the business from sales/marketing to manufacturing, to compliance, and financial results.” However, the record contains insufficient information regarding the Petitioner’s business operations that would delineate its organization, and the Beneficiary’s position within its overall organizational hierarchy. The Petitioner did not submit an organizational chart demonstrating various departments or teams within its organization with which the Beneficiary will be interacting. Therefore, the extent of her duties cannot be determined. The evidence does not show the operational structure within the Petitioner’s business operations in a manner that would establish the Beneficiary’s relative role therein. The Petitioner has not adequately evidenced the scope of the Beneficiary’s responsibilities within the context of its business operations.

On appeal, the Petitioner notes “the complexity of [its] industry and the strict regulations associated with the manufacture and distribution of medical products in over 50 countries . . . .” However, the Petitioner describes the duties in general terms that do not provide sufficient insight into the Beneficiary’s specific duties and responsibilities. For example, the Petitioner does not elaborate on what it means by the Beneficiary “must be continuously aware of” the regulatory requirements of “over 50 countries.” It does not explain what being “aware of” entails and how the Beneficiary accomplishes such duty. The Petitioner also does not provide sufficient insight into its overseas distribution centers and the extent of the Beneficiary’s responsibilities within the context of its overseas operations and her interaction with the staff abroad. The Petitioner also does not state whether it employs other operations research analysts and how the duties are divided among them.

Furthermore, the Petitioner states that “[w]hen products are manufactured outside of the [United States], there is a complicated contract and customs requirement to satisfy for inter-plant transfers” and lists the 43-step process of its internal operations “a ‘make order’” that requires “the advice of the Operations Research Analyst to the Director of Operations when determining the quantity of the order and location of manufacturer between [its] operating plants.” However, the Petitioner does not provide sufficient information regarding the Beneficiary’s specific role within these steps to enable us to make a determination that the position 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, or its equivalent.

In describing the duties, the Petitioner uses general terms such as “undertake analysis,” “collect and analyze data,” “assist with inter-plant inventory planning,” “work to establish daily processes/procedures” and “ensure proper levels of inventory.” However, without more, the submitted job duties do not demonstrate the claimed complexity, uniqueness, or specialization of the work performed by the Beneficiary.<sup>5</sup> The Petitioner does not provide sufficient detail regarding the work

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<sup>5</sup> We must review the actual duties the Beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, we review the duties in conjunction with the specific project(s) or initiatives to which the Beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the Beneficiary is expected to provide.

these duties will entail, and how these tasks merit recognition of the proffered position as a specialty occupation. The duties as described do not communicate the complexity, uniqueness, or specialization of the tasks, and the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

The Petitioner also discussed 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].").

The Petitioner submitted its job announcement, which it claims being "identical to the job announcement to which the Beneficiary, [ ], responded before she commenced employment with [the Petitioner]." Notably, the job title in the announcement reads "Inventory Analyst – Material Planner," which is different than the position title indicated on the petition for the proffered position. Moreover, the announcement states that the position requires a "Bachelor's degree in Engineering, Supply Chain, or Business." We note that a requirement of a "Business" degree without further specification is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. 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, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560. Therefore, the Petitioner's job announcement has little probative value to demonstrate that the proffered position is a specialty occupation.

We also note that the Petitioner has not consistently stated the minimum requirement for the entry into this position. The Petitioner initially stated that it requires a bachelor's degree in "Business, with emphasis in Logistics and/or Supply Chain Management, but a Master of Business Administration is preferred" but did not state that it requires experience. However, in response to the Director's RFE, the Petitioner stated that the position "requires an individual with experience in international supply chain and logistics management and International Trade Practices." The Petitioner made no such assertions in the letter it initially submitted in support of the petition and did not state that the position requires any experience in addition to the degree requirement. The Petitioner must resolve these inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Moreover, the Petitioner also stated that the position "requires strategic thought and analysis and a solid understanding of advanced engineering concepts, computer science, analytics and mathematics." However, the Petitioner does not elaborate on whether such "solid understanding" would be gained through experience, training, or formal education; nor does it explain whether such knowledge should be equivalent to a bachelor's degree or higher in a specific specialty.

The Petitioner submitted a letter from its “Human Resource Director” (HR Director) in which she recited her credentials and experience as a human resources professional and discussed three topics to which she referred as “critical areas of the request for evidence.” First, she discussed the steps of its “internal operation (a ‘make order’)” that we addressed earlier. She noted that these steps are “maintained for over 15,000 discrete products that the company manufactures and distributes over 50 countries with different regulatory requirements in each.” (Footnotes omitted). While we understand that the Petitioner’s operations involve multiple countries with various requirements that affect their business, as we discussed above, the Petitioner has not explained the Beneficiary’s duties with sufficient detail to demonstrate how her duties within the context of the Petitioner’s overseas operations require 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, or its equivalent.

Next, the HR Director stated that “[b]ecause operations research is a multidisciplinary field with a wide variety of applications, [they] found that typically only candidates with a master’s degree has the breadth of skills and expertise needed for the position.” She went on to state that although they recruited at over 20 universities, they “did not receive an abundance of candidates” and that the Beneficiary “was selected from a very small group.” However, the Petitioner has not explained how a low number of applications from candidates makes the position a specialty occupation. We also note that while the Petitioner stated that it prefers a master’s degree in business administration, it did not make such a degree a requirement for the position. Furthermore, as we discussed earlier, we are required to 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. at 560.

Last, the HR Director pointed out that their “direct competitors in [their] industry” have similar requirements as the Petitioner does. However, she did not reference a specific employer. We note that the record contains job advertisements posted by other employers. However, the Petitioner has not demonstrated that these organizations are similar. When determining whether the Petitioner and the advertising organization share the same general characteristics, we look at the information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. For instance, the Petitioner did not submit information regarding the employers’ revenue or staffing. The Petitioner did not sufficiently supplement the record of proceedings to establish that these advertising organizations are similar. Moreover, many of the advertisements do not appear to involve parallel positions, as they appear to be for more senior positions than the proffered position.<sup>6</sup> For the reasons discussed, we find that the HR Director’s letter lends little probative value to the matter here.

Upon review of the totality of the record, we determine it is insufficient to establish the substantive nature of the work to be performed by the Beneficiary, which therefore precludes a conclusion that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the

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<sup>6</sup> Some of the advertised positions require multiple years of experience in addition to a degree requirement.

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.<sup>7</sup>

The Petitioner has not established that the proffered position is a specialty occupation.

**ORDER:** The appeal is dismissed.

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<sup>7</sup> As the lack of probative and consistent evidence in the record precludes a conclusion that the proffered position is a specialty occupation and is dispositive of the appeal, we will not further discuss the Petitioner's assertions on appeal regarding the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).