



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

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

In Re: 8632840

Date: JULY 23, 2020

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a “management 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 California Service Center denied the petition, concluding that the evidence of record does not establish that the proffered position qualifies as 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, 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) 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”).

II. ANALYSIS

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). On appeal, the Petitioner discusses the position’s qualification as a specialty occupation solely under the criterion in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (4). It does not provide new documentary evidence, or otherwise challenge the Director’s determination of ineligibility, under the criteria in subsections (2) or (3) of 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, we will focus our discussion on whether the position qualifies as a specialty occupation under the criterion in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (4).

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, we conclude that the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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 will consider the information contained

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

in the 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.²

The Petitioner submitted the required DOL ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers (LCA) with this petition, where it classified the proffered position under the occupational title "Management Analysts," corresponding to the Standard Occupational Classification (SOC) code 13-1111.³

Although the *Handbook* states that "[a] bachelor's degree is the typical entry-level requirement for management analysts," it also states that "common fields of study include business, management, economics, accounting, finance, marketing, and psychology."⁴ Based on the wide range of degrees the *Handbook* indicates is acceptable for entry into this occupation, the *Handbook* does not support the conclusion that a bachelor's or higher degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into a management analyst position.

In addition, the *Handbook* confirms that a general-purpose bachelor's degree (e.g., a bachelor's degree in business, with no further specialization) would adequately prepare an individual to perform the duties of these positions. Although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation.⁵ Therefore, the *Handbook's* recognition that a general, non-specialty field of study in business is sufficient for positions located within this occupational category strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

In support of the petition, the Petitioner submitted a letter from [redacted] a [redacted] [redacted] Department of Management at the University of [redacted]

In his letter, [redacted] describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; and states that these duties require at least a bachelor's degree in finance, economics, or a closely related business discipline. We carefully evaluated [redacted]'s assertions in support of the instant petition but, for the following reasons, determined his letter is not persuasive.

First, we observe that [redacted] states that he "carefully review[ed] a detailed job description of the Management Analyst position as described by [the Petitioner];" however, he does not discuss

² 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.

³ The Petitioner is required to submit a certified LCA to U.S. Citizenship and Immigration Services (USCIS) to demonstrate that it will pay the Beneficiary 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 experience and qualifications who are performing the same services. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

⁴ Bureau of Labor Statistics, DOL, *Handbook*, Management Analysts, <https://www.bls.gov/ooh/business-and-financial/management-analysts.htm> (last visited on July 22, 2020).

⁵ See *Royal Siam Corp.*, 484 F.3d at 147.

the duties of the proffered position in any substantive detail. Rather, he compares the proffered duties to the tasks listed in DOL's Occupational Information Network (O*NET) summary report for "Management Analysts" listed as SOC code 13-1111.00 and asserts that the proffered position is a management analyst position. Moreover, he does not discuss the duties in the specific context of the Petitioner's business. There is no indication that he possesses any knowledge of the Petitioner's proffered position beyond this limited job description, e.g., visited the Petitioner's business, observed the Petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that these workers apply on the job prior to documenting his opinion regarding the proffered position. His level of familiarity with the actual job duties as they would be performed in the context of the Petitioner's business has therefore not been substantiated.

In addition, the record does not include evidence that [redacted] has for example, published, conducted research, run surveys, or engaged in an enterprise, pursuit, or employment - academic or otherwise - regarding the minimum education requirements for the performance of the duties of the proffered position. [redacted] again references the O*NET summary report for "Management Analysts." The summary report provides general information regarding the management analysts occupation; however, it does not support the Petitioner's assertion regarding the educational requirements for management analyst positions. For example, the management analyst occupation is designated as Job Zone Five, a zone for which "most. . . occupations require graduate school." However, the O*NET does not specify what field, if any, that the occupation requires the degree to be in.⁶

For the reasons discussed, we conclude that the opinion letter from [redacted] is insufficient to satisfy the first criterion. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is "not in accord with other information or is in any way questionable."). For the sake of brevity, we will not address the other deficiencies within the professor's analyses of the proffered position.

In the instant matter, the Petitioner has not provided sufficient documentation from a probative, authoritative 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).

B. 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.

We reviewed the Petitioner's statements regarding the proffered position. We found that some of the job duties provided by the Petitioner are recited virtually verbatim from the O*NET Summary Report's list of tasks for "Management Analysts" – SOC code 13-1111. Providing job duties for a proffered position from O*NET is generally not sufficient for establishing H-1B eligibility. That is,

⁶ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

while this type of description may be appropriate when defining the range of duties that may be performed within an occupational category, it cannot be relied upon by the Petitioner when discussing the duties attached to specific employment for H-1B approval as this type of generic description does not adequately convey the substantive work that the Beneficiary will perform on a day-to-day basis and is not sufficient to satisfy the fourth prong of this criterion. In establishing a position as qualifying as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of its business operations, demonstrate that a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

Setting aside those duties which were copied from O*NET, the remaining job duties provided by the Petitioner are also not sufficient to satisfy the fourth prong of this criterion. While the Petitioner provided the various software the Beneficiary will use to “generate monthly and seasonal financial reports, conduct Information Flow Optimization and Diagnosis Utilization Analysis, and produce reports on patient credit analysis, provider analysis, and procedure payer payment analysis,” it has not sufficiently developed specialized and complex as an aspect of the proffered position. That is, the Petitioner has not explained in detail how job duties such as:

- Studies economic and business trends to create monthly, quarterly and annual reports with statistical data trends in revenue cycle performance as compared to benchmarks and key performance indicators
- Accesses and interprets appropriate financial data for purposes of identifying management performance improvement opportunities, cost savings, and revenue enhancement opportunities
- Reviews costs and performs a cost benefit analysis related to projects and/or programs to advise company about investments opportunities and recommend actions to management based on sound analysis

require the theoretical and practical application of a body of highly specialized knowledge. Moreover, the duties listed above focus on an outcome or result, rather than the process undertaken to produce such an outcome or result. Such circular descriptions do not meaningfully convey the duties of the position apart from its overall outcome. Thus, the Petitioner has not demonstrated 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).

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 reasons. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.