



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

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

In Re: 9581133

Date: JULY 1, 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 an “information technology (IT) 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

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, we conclude that the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

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 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.³

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

² 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.

³ 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.

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 “Computer Occupations, All Other,” corresponding to the Standard Occupational Classification (SOC) code 15-1199.00; more specifically, the Petitioner stated that the position corresponds to the SOC sub-code and category 15-1199.02, “Computer Systems Engineers/Architects.”⁴ We note that there are occupational categories which are not covered in detail by the *Handbook*.⁵ The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed. When the *Handbook* does not support the proposition that a proffered position is a specialty occupation, it is the Petitioner’s responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that indicates whether the particular position in question qualifies as a specialty occupation.

The Petitioner referenced DOL’s Occupational Information Network (O*NET) summary report for “Computer Systems Engineers/Architects” - SOC code 15-1199.02 in support of this criterion. The O*NET Summary Report provides general information regarding the occupation, but it does not support the Petitioner’s assertion regarding the educational requirements for the occupation. For example, the Job Zone Four designation indicates that most, but some do not, require a four-year bachelor’s degree. It does not specify the specific field of study, if any, from which the degree must come. The occupation’s Specialized Vocational Preparation (SVP) rating of 7 < 8 is even less persuasive. 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 which, by definition, includes high school education and commercial or shop training.⁶ The SVP rating also does not specify the particular type of degree, if any, that a position would require. Moreover, the report does not indicate that the degrees of the respondents were in a specific specialty and does not distinguish the respondents’ positions by career level (e.g., entry-level, mid-level, senior-level) or other relevant aspects. For all these reasons, we are not persuaded by the Petitioner’s citations to O*NET.

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.⁷ Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

⁴ 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).

⁵ We note that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm and home management advisors; audio-visual and multimedia collections specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

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

⁷ The Petitioner submitted an opinion letter from [redacted] a professor of computer and information sciences at [redacted] University, which we will discuss under the second criterion to explain why it is not probative evidence and

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 the 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 attest that such firms “routinely employ and recruit only degreed individuals.” *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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter.

In support of this criterion, the Petitioner submitted an opinion letter written by [redacted] at [redacted] University. 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.*

[redacted] opines that “it is a general, industry-standard practice for companies . . . such as the [Petitioner] to ensure that professionals hired for an information technology position of this nature possess a bachelor’s-level background in . . . Computer Science, Technology, or Software Engineering, or a related information technology field.” [redacted] asserts that he is qualified to provide that opinion based on his educational background and experience as a university professor and in the industry, as well as his expertise and experience as an evaluator. However, [redacted]’s résumé submitted in support of his opinion letter does not establish that he developed personal knowledge of the hiring practices of a particular company, let alone industry-wide hiring practices for positions in the “Computer Systems Engineers/Architects” occupational category. Specifically,

incorporate the discussion regarding the letter into our analysis of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

[redacted]s résumé informs that, since 1993, his employment has been limited to academic instruction or as a “software consultant” specializing in “graphical simulators to support electronic trading platforms” for an unspecified company. Further, the record does not sufficiently demonstrate that he has conducted any research or studies pertinent to the educational requirements for “Computer Systems Engineers/Architects” (or parallel positions) in the Petitioner’s industry for similar organizations and is recognized by professional organizations as an authority on those specific requirements. Additionally, although [redacted] opines that “hiring data from publicly-available resources such as Monster.com and Indeed.com serves to support this overall trend,” the record does not include a copy of that data. Therefore, [redacted]s opinion bears minimal probative value.

In addition, the Petitioner provided copies of ETA Form 9089, Application for Permanent Employment Certification (PERM) from three companies. Notably, the PERM applications do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is a healthcare management company, whereas the organizations on the PERM applications include a cyber security services company, and two software development companies. The Petitioner did not supplement the record of proceedings to establish that these advertising organizations are similar.

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include 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 conducts business in the same industry without providing a legitimate basis for such an assertion.

Moreover, the PERM applications do not appear to involve parallel positions. For example, the applications show the positions classified under the occupational title “Computer Systems Analysts,” corresponding to the SOC code 15-1121. In addition, two of the applications states that the positions are at a Level II wage and these individuals are paid substantially more than the salary offered to the Beneficiary. Further, the applications do not include sufficient information about the tasks and responsibilities for the positions. Thus, the Petitioner has not sufficiently established that the primary duties and responsibilities of the PERM application positions are parallel to those of the proffered position.

In addition, some of the applications do not indicate that at least a bachelor’s degree in a directly related specific specialty (or its equivalent) is required.⁸ For instance, two of the PERM applications state that a general bachelor’s degree in business administration is acceptable.⁹ Overall, the PERM

⁸ As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor’s or higher degree, but a bachelor’s degree in a specific specialty that is directly related to the duties of the position. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Further, a *preference* for a degree in a field is not necessarily an indication of a minimum *requirement*.

⁹ 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. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a general degree, 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) (“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, also does not establish eligibility.”). Thus, while a general-purpose bachelor’s degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not

applications suggest, at best, that although a bachelor's degree is sometimes required for these positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.

Without more, the Petitioner has not provided sufficient 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.

We reviewed the Petitioner's statements regarding the proffered position; however, while the Petitioner stated that the Beneficiary "will participate and support the design, development, configuring, testing, implementation and on-going maintenance of new and existing applications," it has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. That is, the Petitioner has not explained in detail how the nature of some of the duties such as:

- Works with management staff and users to identify, analyze and prioritize needs and requirements
- Interacts with end users to monitor systems utilization
- Remains abreast of current and emerging technologies in the field of Health Information Systems
- Ensures that other departments involved in projects are communicated with effectively.
- Interacts with vendors and reports software problems through customer support and resolves software problems
- Responsible for monitoring and facilitating all work orders and help desk calls for the departments covered in the lead role
- Assists in the coordination of work being done by consultants and vendors
- Ensures confidentiality is maintained while using live data on the system, reports or other written/verbal information, passwords and patient financial data
- Participates in multiple concurrent projects of varying size and complexity, helping ensure that all work is accomplished efficiently and in accordance with project expectations
- Acts as the primary liaison with the covered department management and staff with respect to coordinating activities

are so complex and unique that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or its equivalent. In addition, other duties appear to be administrative or clerical in nature and do not readily feature specialized knowledge. It is not apparent, for instance, why a bachelor's degree in a specific specialty would be needed to

justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147.

“[r]emain abreast of current and emerging technologies in the field of Health Information Systems” or to “[e]nsure that other departments involved in project are communicated with effectively.” Even taken at face value, staying abreast of technologies and communicating with others are skills that can be learned in any educational program and indeed through life in general. These descriptions do not sufficiently convey the nature of the position or why it is specialized.

The Petitioner asserts that it requires a bachelor’s degree in computer science, software engineering, information science, information technology, or other closes related degree in the IT field for the proffered position. However, while a few related courses may be beneficial in performing certain duties of the position, the Petitioner 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.

The Petitioner also asserts on appeal that [redacted]’s opinion letter, discussed above, satisfies the second prong of the second criterion. The Petitioner states that [redacted]’s opinion letter specifically addresses “the complexity of the position.” However, as noted above, there is no indication that [redacted] has conducted any research or studies pertinent to the educational requirements for such positions, and no indication of recognition by professional organizations that he is an authority on those specific requirements. Given that [redacted]’s opinion is not substantiated by objective research or studies relevant to the proffered position, and the extent to which his opinion is not in accord with other information in the record, it bears minimal probative value. *See Matter of Caron Int’l, Inc.*, 19 I&N Dec. at 795.

The Petitioner claims that the Beneficiary is well-qualified for the position and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed 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 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.

The record must establish that a petitioner’s stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. *See Defensor*, 201 F.3d at 387-88. Were we limited solely to reviewing a petitioner’s claimed self-imposed requirements, an organization could bring any individual with a bachelor’s degree to the United States to perform any occupation as long as the petitioning entity created a token degree requirement. *Id.* Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner’s past recruitment and hiring practices, as well as information regarding employees who previously held the position.

In support of this criterion, the Petitioner provided a list of its employees in IT analyst positions, along with copies of some of the individuals' academic credentials and H-1B approvals. However, the record lacks evidence establishing that these individuals were hired into IT analyst positions that are the same or similar to the one offered to the Beneficiary. The Petitioner did not provide the job duties and day-to-day responsibilities for these individuals. The Petitioner also did not submit any information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required, or the amount of supervision received. Accordingly, it is unclear whether the duties and responsibilities of these individuals are the same or similar to the proffered position.

The Petitioner has not persuasively established that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. Therefore, 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.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. While the position may require that the Beneficiary possess some skills and technical knowledge in order to perform these duties, the Petitioner has not sufficiently explained how these tasks require 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. The record does not include sufficient probative evidence that the duties require more than technical proficiency in the field. 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.