



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

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

In Re: 8420597

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 a “CBO business 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

The Petitioner stated that the Beneficiary will be employed as a “CBO business analyst” and that a minimum of a bachelor’s degree in business analytics, finance, healthcare administration, information technology and management, or other closely related healthcare business fields is required for entry into the position. The Petitioner provided multiple lists of duties and while we will not list each duty here, we have reviewed and considered each one. 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 does not include sufficient consistent, probative evidence establishing that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

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.²

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 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

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 15-1199.08, “Business Intelligence Analysts.”³

The *Handbook* is a career resource offering information on hundreds of occupations. However, there are occupational categories which the *Handbook* does not cover in detail, and instead provides only summary data.⁴ The subchapter of the *Handbook* titled “Data for Occupations Not Covered in Detail” states, in relevant part, that the “[t]ypical entry-level education” for a variety of occupations within the category of “[c]omputer and mathematical occupations” is a “Bachelor’s degree,” without indicating that the bachelor’s degree must be in a specific specialty.⁵ Thus, the *Handbook* is not probative in establishing that these positions comprise an occupational group for which the normal minimum requirement for entry is at least a bachelor’s degree in a specific specialty, or its equivalent.

The Petitioner referenced DOL’s Occupational Information Network (O*NET) summary report for “Business Intelligence Analysts” - SOC code 15-1199.08 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.

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, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Data for Occupations Not Covered in Detail, <https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm> (last visited June 24, 2020). Here, the *Handbook* does not provide specific information for various occupations which might be classified within the occupational category.

⁵ The *Handbook* also indicates that this occupation does not require work experience in a related occupation or typical on-the-job training. *Id.*

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

Also, in support of its arguments, the Petitioner cited to various court opinions. Initially, we note that in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of United States district courts in matters arising even within the same district.⁷ Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law.⁸

The Petitioner cited to *RELX, Inc. v. Baran*⁹ to support its argument that a position may be specialized even when the position permits more than one specific specialty for entry into it. As the foregoing discussion demonstrates, while we agree that the bachelor's degree does not have to be a degree in a *single* specific specialty, we do not agree with the analytical framework set forth by the *RELX* court.

In *RELX*, the court did not address the statutory and regulatory provisions as they pertain to the requirement that the bachelor's degree, or its equivalent, be in a *specific specialty*. To avoid restricting the qualifying occupations to those for which a single, specific specialty exists, the court did not consider the requirement for specialization and overlooked that neither the *Handbook* nor O*NET stated that the referenced bachelor's degree must be in a specific specialty. In overlooking this relevant detail, the court disposed of the precedential authority created by *Royal Siam Corp. v. Chertoff*¹⁰ and continued to do so when it examined the evidence presented for the other criteria.

We also disagree with the court's statement that "[the Petitioner] did not just make a general reference to O*NET. Rather, [the Petitioner] stated that the Data Analyst position is aligned with the DOL's "Business Intelligence Analyst" position for which there is a detailed description that is directly relevant to the inquiry of whether the position is specialized."¹¹ While we agree that O*NET is relevant, the court's treatment of O*NET as dispositive simply because the proffered position aligned with the occupational category disregards the *specific specialty* analysis that underpins *Royal Siam Corp.* The *RELX* court further stated that "[s]ince the [*Handbook*] indeed does provide specific detailed information regarding educational requirements for the computer operations category, and the detailed information states most of the occupations require a four-year bachelor's degree, the agency's rationale was both factually inaccurate and not supported by the record."¹² Here, again the court did not undertake the proper inquiry regarding the specific educational requirements of the position and instead regards a general requirement for a bachelor's degree as sufficient to discharge the petitioner's burden.

Because the *Handbook* and O*NET do not describe the normal minimum educational requirements with sufficient specificity to establish that the positions falling within the occupational category are specialized, we disagree with the court's reliance on these sources as establishing the requisite eligibility. Instead, we believe that absent support from the *Handbook* and O*NET, the court should

⁷ See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993).

⁸ *Id.*

⁹ *RELX, Inc. v. Baran*, 397 F.Supp.3d 41 (D.D.C. Aug. 5, 2019).

¹⁰ *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").

¹¹ *RELX, Inc.*, 397 F.Supp.3d at 54.

¹² *Id.*

have analyzed whether the petitioner had sufficiently demonstrated that its particular position was one for which a bachelor's degree would normally be required and whether the stated field(s) of study directly related to the performance of the duties.¹³ In other words, though we agree with the *RELX* court that the bachelor's degree does not have to be a degree in a single specific specialty, this agreement is predicated upon the fields of study being closely related to the duties of the position and the record reflecting evidence sufficient to establish such relation.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position.¹⁴ For the foregoing reasons, we cannot agree with the reasoning contained in the *RELX* decision¹⁵ and therefore conclude that the Petitioner's reliance upon the case does not support its eligibility.¹⁶

The Petitioner also cited *Next Generation Tech., Inc. v. Johnson*¹⁷ as relevant here and uses it to support a conclusion concerning the meaning of what is "normally" the minimum requirement for the position. We question the applicability of *Next Generation Tech., Inc.* in the instant matter, as it analyzed our reading of the *Handbook* concerning the entry requirements for positions located within a different and separate occupational category of "Computer Programmers." As recognized by another court, while the *Handbook* may establish the first regulatory criterion for certain professions,¹⁸ many occupations are not described in such a categorical manner.¹⁹ For example, "[the *Handbook's*] description for the Computer Programmer occupation does not describe the normal minimum

¹³ Though the *RELX* court briefly discusses the duties of the position, it did not engage in analysis of whether the duties actually required 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 as the minimum for entry into the occupation. Rather, after disposing of the authority set forth in *Royal Siam Corp.*, the court accepted the petitioner's stated standards concerning its position. See generally *Defensor v. Meissner*, 201 F.3d 384, 387.

¹⁴ Section 214(i)(1)(B) of the Act (emphasis added).

¹⁵ The Petitioner also cited to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) and *Tapis Int'l v. Immigration and Naturalization Service*, 94 F. Supp. 2d 172 (D. Mass. 2000) for the proposition that "there is no apparent requirement that the specialized study needed be in a single academic discipline...The knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation specific majors." As the Petitioner cited these cases for reasons similar to that which it cites to *RELX*, we incorporate herein by reference our discussion of closely related specialties as it pertains to our analysis of the *RELX* case.

¹⁶ We further note that the Director's decision in *RELX* was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision to address many of the concerns articulated by the district court if they could not have been remedied by us in our *de novo* review of the matter.

¹⁷ *Next Generation Tech., Inc. v. Johnson*, 328 F. Supp. 3d 252 (S.D.N.Y. Sept. 29, 2017).

¹⁸ Such professions would include surgeons or attorneys, which indisputably require at least a bachelor's degree for entry into the occupation.

¹⁹ See *Innova Sols., Inc. v. Baran*, 2019 WL 3753334, at *8 (N.D. Cal. Aug. 8, 2019) (declining to follow *Next Generation Tech., Inc.*).

educational requirements of the occupation in a categorical fashion.”²⁰ In such a case, “[the Petitioner] could not simply rely on [the *Handbook*] profile, and instead had the burden to show that the particular position offered to [the Beneficiary] was among the Computer Programmer positions for which a bachelor’s degree was normally required.”²¹ Similarly, the Petitioner in the instant matter may not solely rely on the *Handbook* to establish its eligibility.

Moreover, the court in *Next Generation Tech., Inc.* relied in part on a USCIS policy memorandum regarding “Computer Programmers” indicating generally preferential treatment toward computer programmers, and “especially” toward companies in that particular petitioner’s industry. However, USCIS rescinded the policy memorandum cited by the court in *Next Generation Tech. Inc.*²²

As the foregoing demonstrates, 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)(1).

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

²⁰ *Id.*; see also *Xiaotong Liu v. Baran*, 2018 WL 7348851 (C.D. Cal. Dec. 21, 2018).

²¹ See *Innova Sols., Inc.*, 2019 WL 3753334 at *8.

²² See USCIS Policy Memorandum PM-602-0142, *Rescission of the December 22, 2000 “Guidance memo on H1B computer related positions”* (Mar. 31, 2017), <https://www.uscis.gov/sites/default/files/files/nativedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf>.

specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

The Petitioner submits a letter from its Vice President of Outsourcing and Strategy for our consideration under this prong. To be relevant for consideration, the letter must establish that "parallel positions" within organizations that (1) conduct business in the Petitioner's industry and (2) are also "similar" to the Petitioner require a bachelor's degree in a specific specialty, or its equivalent. The letter does not satisfy that threshold. The letter simply asserts that the position of a CBO business analyst requires a bachelor's degree in business analytics, finance, healthcare administration, information technology and management, or other closely related healthcare business fields. Moreover, the letter discusses the Beneficiary's relevant courses to the proffered position and lists the position's job duties, along with approximate percentage of time the Beneficiary will spend on each task. However, it does not indicate that a bachelor's degree in a specific specialty, or the 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 provided additional information in how the duties would be carried out in response to the Director's request for evidence, 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:

- Take user/vendor requirements to modify or tailor analysis and reports for various revenue cycle projects, which helps reduce the operational costs for the healthcare system
- Work with various stakeholders that will optimize and enhance the integration of improved revenue cycle processes
- Review, analyze, and report on ways that improve revenue cycle processes that deliver better value to various stakeholders and vendors
- Prepare business documentation related to process improvements for healthcare revenue cycle initiatives
- Provide formal training to revenue cycle staff that support business analysis on healthcare revenue cycle matters
- Work with revenue cycle management and team members to work on meeting project timelines through meetings with internal stakeholders and third-party teams

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. Notably, 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 "[c]ommunicate and deliver change management initiatives to all revenue cycle staff." Even taken at face value, communicating and interacting with others is a skill 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 so complex.

The Petitioner stated that it requires a bachelor's degree in business analytics, finance, healthcare administration, information technology and management, or other closely related healthcare business fields 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 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 business analyst positions, along with copies of some of the individuals' academic credentials. However, the record lacks evidence establishing that these individuals were hired into business 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.