



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

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

In Re: 8723414

Date: JULY 8, 2020

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary 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 California Service Center Director denied the petition, concluding that the Petitioner had not established that the proffered position is a specialty occupation. On appeal, the Petitioner asserts that the Director erred and that the proffered position is a specialty occupation.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 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.¹ Lastly,

¹ 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, established in 2007, is a financial services firm operating with a staff of 14 individuals which offers “financial planning services on a shared platform for families to leverage their resources and choose the services that best meet their needs.” The Petitioner seeks to employ the Beneficiary as a “business analyst to provide business consulting services to clients with the purpose of improving the quality and efficiency of the [Petitioner’s] service to its clients through the evaluation and re-design of management systems, processes and procedures.” The Petitioner initially provided an outline of the duties of the proffered position based on job function, along with the percentage of time devoted to each job function, as follows:

1. Organizational review and design of service delivery to clients. (10%)
2. Analysis and review of processes and procedures. (10%)
3. Client service and process metrics and communication, to include the use of social media. (15%)
4. Implementation of new management information system relating to client information and reporting system. The [Petitioner] has selected the Black Diamond

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”).

- wealth management information system as its new client information and reporting tool. The [Petitioner] requires [the Beneficiary] to assist in the implementation of the new system. . . .(15%)
5. Implementation of Salesforce, a client relationship management system. (25%)
 6. Support to clients' philanthropic giving. (15%)
 7. Review of use of statements of investment policy (SIPs); each of our clients has a SIP. The current SIP are brief and general, and do not have the information needed to make full use of the capability of Black Diamond. (10%)

In response to the Director's request for evidence (RFE), the Petitioner presented an expanded listing of job duties, which included a modified list of job functions along with the percentage of time devoted to each job function (which we have *italicized* for emphasis), as follows:²

1. Organizational review and design of service delivery to clients. (10%)
2. Analysis and review of processes and procedures. (10%)
3. Client service and process metrics and communication, to include the use of social media. (15%)
4. Implementation of new management information system relating to client information and reporting system. The [Petitioner] has selected the Black Diamond wealth management information system as its new client information and reporting tool. The [Petitioner] requires [the Beneficiary] to assist in the implementation of the new system. . . . (15%)
5. *Implementation of a new client relationship management system. The [Petitioner] has selected a system based on Salesforce as its new client management system. The [Petitioner] requires [the Beneficiary] to assist in the implementation of the new system. . . . (20%)*
6. *Selection and implementation of a new financial planning system. (15%)*
7. *Support to clients' philanthropic giving. (10%)*
8. *Review of use of statements of investment policy (SIPs); each of our clients has a SIP. The current SIP are brief and general, and do not have the information needed to make full use of the capability of Black Diamond. (5%)*

The Petitioner requires a bachelor's degree in business administration and management or a related field for entry into the proffered position.

² We acknowledge that the Petitioner submitted additional information for the job duties, which, for the sake of brevity, have not been included herein. This material has been closely reviewed and considered, as with all evidence in the record. The Petitioner also discusses the Beneficiary's previous coursework in order to correlate 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].").

III. ANALYSIS

For the reasons set out below, we determine that the proffered position does not qualify as a specialty occupation. Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.³

The Petitioner maintains on appeal that the proffered position “is in fact a highly specialized position that focuses on the evaluation and redesign of management systems, processes and procedures. Consequently, a degree in Business Administration and Management or a related field is normally the minimum requirement for the offered position.” The Petitioner’s requirement of a degree in business administration and management has remained consistent throughout the proceedings, from the time of initial filing to the appeal. However, that claim is inadequate to establish that the proposed 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 administration and management, 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). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor’s or higher degree in a specialized field of study or its equivalent. As stated above, we interpret the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. We have consistently stated that, although a general-purpose bachelor’s degree, such as a degree in business administration and management, 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. *Royal Siam Corp.*, 484 F.3d at 147.

Here, the Petitioner asserts that the duties of the proffered position can be performed with only a general-purpose bachelor’s degree, i.e., a bachelor’s degree in business administration and management. That statement alone indicates that the proffered position is not in fact a specialty occupation. The Director’s decision must also therefore be affirmed and the appeal dismissed on this basis alone.

Moreover, we conclude the record provides inconsistent and insufficient information regarding the proffered position, which in turn precludes us from understanding the position’s substantive nature and determining whether the proffered position qualifies as a specialty occupation.

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

³ 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.

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 the labor condition application (LCA),⁴ the Petitioner designated the proffered position under the occupational category "Management Analysts" corresponding to the SOC code 13-1111 with a Level I wage, indicating that this occupational category closely corresponds to the proffered position. However, the record does not sufficiently establish that the proffered job duties correspond with the general duties of "Management Analysts." For instance, the Petitioner provides narrative regarding the nature of the proffered position in response to the Director's RFE, indicating that the position predominantly entails a computer systems design and implementation role, as follows:

The [business analyst] role arises because we make use of complex IT systems to deliver services to our clients accurately and efficiently. The functionality we need from these systems includes comprehensive and flexible client reporting, asset allocation, management of complex processes, task management, cash flow forecasting, estate analysis, and retirement planning. Given the size of our business, it is not cost effective to build systems ourselves. Instead we buy systems, such as Black Diamond and Salesforce, and then tailor these systems such that they can support the process we follow to provide service to our clients. The tailoring of the systems involves identifying and implementing improvements in the quality and efficiency of our service to clients through the evaluation and re-design of management systems, processes, and procedures.

The U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* summarizes the "Management Analysts" role, indicating "[m]anagement analysts, often called *management consultants*, propose ways to improve an organization's efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues."⁵ The *Handbook* also states that "Management Analysts" typically:⁶

- Gather and organize information about the problem to be solved or the procedure to be improved
- Interview personnel and conduct onsite observations to determine the methods, equipment, and personnel that will be needed
- Analyze financial and other data, including revenue, expenditure, and employment reports
- Develop solutions or alternative practices

⁴ A petitioner is required to submit an LCA to the Department of Labor 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).

⁵ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Management Analysts, <https://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-2> (Last visited July 7, 2020). All of our references to the *Handbook* may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not maintain that the *Handbook* is the exclusive source of relevant information.

⁶ *Id.*

- Recommend new systems, procedures, or organizational changes
- Make recommendations to management through presentations or written reports
- Confer with managers to ensure changes are working

We acknowledge that the Petitioner provided duties for the proffered position which may comport, in part, with the typical tasks performed by individuals employed in the “Management Analysts” occupational category, noting for instance that she will, among other things:

- Conduct in-depth review of current organizational design to include interviews with all team members to understand current role and responsibilities, information flows, and key relationships with other team members.
- Summarize main messages from interviews with focus on client needs, and weakness of the existing structure.
- Meet with senior management to review the options and recommendations.
- Develop implementation plan and schedule for introduction of new [organizational] structure.

However, as we will discuss, the *Handbook* and the (DOL) Occupational Information Network (O*NET) summary report for “Management Analysts” do not specifically include duties consistent with other duties of the proffered position which involve system software design, monitoring, troubleshooting, customization, and implementation as described by the Petitioner.⁷ For instance, on appeal the Petitioner emphasizes that the Beneficiary will collectively spend 50% of her work time engaged in activities related to the implementation of its new information management systems,⁸ such as:

- Prepare draft proposals on expanded use of Black Diamond’s functionality for discussion with Manager, Data and Reporting, and Manager, Portfolio Management and Asset allocation.
- Develop queries and lead teams for project related activities inclusive of gathering user requirements.
- Develop and execute system test plans for introduction of Black Diamond system improvements and fixes.
- Maintain and manage security and users access to system software.
- Provide technical supervision and consultation to users (our team members).
- Develop queries and lead teams for project related activities inclusive of gathering user requirements [for Salesforce system development].
- Coordinate activities between our outsourced cloud services IT provider [], our team and an outside vendor [].
- Research and develop approaches for maintaining the integrity of the database.
- Monitor [Salesforce] system usage and implement strategies to ensure consistent usage across the team.

⁷ See the O*NET summary report for “Management Analysts,” <https://www.onetonline.org/link/summary/13-1111.00> (Last visited July 7, 2020).

⁸ The job functions numbered 4, 5, and 6 above that were submitted in response to the Director’s RFE collectively account for 50% of the Beneficiary’s work time.

- [] Prepare detailed [Salesforce] implementation plan.
- Develop [Salesforce] training modules for each team role including written processes.
- Translate interviews into a practical user requirements (URD) for discussion with executive management.
- Structured [system] assessment of the functionality provided against the URD.

While the Petitioner contends on appeal that the proffered position “falls within the general umbrella of management analyst occupations,” we determine that the Petitioner’s inclusion of proffered position duties such as these raises questions as to whether the Beneficiary will actually be predominantly engaged in duties that are consistent with the “Management Analysts” occupation, which undermines the Petitioner’s assertion that the proffered position is sufficiently specialized or complex that it requires a degree in specific specialty. The Petitioner must resolve these inconsistencies and ambiguities with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We observe that many of the aforementioned duties of the proffered position appear to be closely related to the “Computer Systems Analysts” occupational category’s responsibilities and tasks as described in the *Handbook* and the O*NET summary report for the occupation. The *Handbook* summarizes the “Computer Systems Analysts” role, indicating that “[c]omputer systems analysts study an organization’s current computer systems and find a solution that is more efficient and effective.”⁹ Further, the O*NET summary report for the “Computer Systems Analysts” occupational category shows that someone in this position will, among other things:¹⁰

- Test, maintain, and monitor computer programs and systems, including coordinating the installation of computer programs and systems.
- Troubleshoot program and system malfunctions to restore normal functioning.
- Expand or modify system to serve new purposes or improve work-flow.
- Consult with management to ensure agreement on system principles. Confer with clients regarding the nature of the information processing or computation needs a computer program is to address.
- Develop, document and revise system design procedures, test procedures, and quality standards. Train staff and users to work with computer systems and programs.
- Assess the usefulness of pre-developed application packages and adapt them to a user environment.
- Define the goals of the system and devise flow charts and diagrams describing logical operational steps of programs.
- Provide staff and users with assistance solving computer related problems, such as malfunctions and program problems.
- Read manuals, periodicals, and technical reports to learn how to develop programs that meet staff and user requirements.

⁹ See <https://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm> (Last visited July 7, 2020).

¹⁰ See <https://www.onetonline.org/link/summary/15-1121.00>. (Last visited July 7, 2020.)

- Interview or survey workers, observe job performance or perform the job to determine what information is processed and how it is processed.
- Specify inputs accessed by the system and plan the distribution and use of the results.
- Recommend new equipment or software packages.

In considering the evidence in its totality, we conclude that the Petitioner has provided inconsistent evidence regarding whether the proffered position properly falls within the “Management Analysts” occupational category corresponding to SOC code 13-1111, or within the occupational category for “Computer Systems Analysts” under SOC code 15-1121. We note that this occupational category has a higher prevailing wage than the “Management Analysts” occupational category, and exceeds the level of compensation offered to the Beneficiary in the petition.¹¹

It is crucial that an LCA must correspond to the petition in all material aspects, including the prevailing wage and the occupational category certified therein.¹² The regulation at 20 C.F.R. § 655.705(b) requires that U.S. Citizenship and Immigration Services (USCIS) ensure that an LCA actually supports the H-1B petition filed on behalf of the Beneficiary. According to DOL guidance on the LCA, if a proffered position involves a combination of different occupational classifications, then the petitioner should select the relevant occupational code for the highest-paying occupation.¹³ For purposes of the LCA, the Petitioner is required to select the occupational code that best represents the nature of the job offer, which in turn determines the appropriate prevailing wage.¹⁴

Through the certified LCA, the Petitioner represented that the duties of the proffered position would be for the “Management Analysts” occupational category corresponding to SOC code 13-1111 and provided a position description partially consistent with this occupational category. However, it has also furnished evidence describing the nature of the position as substantially more akin to the “Computer Systems Analysts” occupation under SOC code 15-1121. If the Petitioner believed its position to be a combination of both the “Management Analysts” and the higher paying “Computer Systems Analysts” occupation, then the Petitioner should have submitted an LCA for a position under the “Computer Systems Analysts” occupational code and classification. Here, the Petitioner has not done so, and has not sufficiently explained why the “Management Analysts” occupational category at a level I wage is appropriate for the proffered position.¹⁵

¹¹ The prevailing wage in the area and time period of intended employment for “Computer Systems Analysts” is \$54,038, while the prevailing wage for “Management Analysts” as stipulated on the instant LCA is \$49,525 per year. For more information on prevailing wages generally, see the FLC Data Center at <http://www.flcdatacenter.com/OESWizardStart.aspx> (last visited July 7, 2020).

The Petitioner indicates that it will pay the Beneficiary \$49,525, an amount substantially less than the prevailing wage for the “Computer Systems Analyst” occupation which causes concern regarding whether the submitted LCA corresponds to the petition in all material aspects, including the occupational category and the appropriate prevailing wage certified therein. See Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

¹² *Id.*

¹³ See *Prevailing Wage Determination Policy Guidance*, *supra*.

¹⁴ *Id.*

¹⁵ The Petitioner must also resolve these inconsistencies and ambiguities with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, Dec. at 591-92.

Therefore, we conclude that the Petitioner has not sufficiently demonstrated the substantive nature of the proffered position. As a result, the evidence in the record does not adequately communicate (1) the actual work that the Beneficiary will perform; (2) the complexity, uniqueness, or specialization of the tasks; and (3) the correlation between that work and a need for a particular level of education and knowledge. As a result, the petition may not be approved.

For all of the reasons discussed, the Petitioner has not established the substantive nature of the proffered position. We are therefore precluded from finding 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 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. As the Petitioner has not established eligibility under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.¹⁶

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

¹⁶ 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).