



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

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

In Re: 8909703

Date: JUNE 17, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, an Internet service company, seeks to temporarily employ the Beneficiary as a “data scientist” under the H-1B nonimmigrant classification for specialty occupations.¹ The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish that the position qualifies as a specialty occupation.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.² We review the questions in this matter *de novo*.³ 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.⁴ Lastly,

¹ Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

² Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

³ See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

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

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. ANALYSIS

The Petitioner stated that the Beneficiary will be employed as a “data scientist” and that a minimum of a bachelor’s degree in business analytics 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.⁵ Specifically, we conclude that the Petitioner has not established the substantive nature of the work that the Beneficiary will perform due to insufficient evidence, a lack of specificity in its description of the duties to be performed, and material inconsistencies contained within the record of proceeding. Because we cannot determine the substantive nature of the position, we are precluded from determining that the proffered position satisfies any of the regulatory specialty-occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

⁵ 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.

The Petitioner designated the proffered position on the labor condition application (LCA) as a Standard Occupation Classification (SOC) code 15-1199 “Computer Occupations, All Other” occupation. To inform this inquiry, we would normally 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. Though the *Handbook* is a career resource offering information on hundreds of occupations, there are occupational categories the *Handbook* does not cover in detail and instead provides only summary data.⁶ 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.⁷ 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.

DOL’s Occupational Information Network (O*NET) Summary Report for the Computer Occupations, All Other category can provide general information regarding various occupations, including a range of duties and knowledge areas associated with an occupational category. O*NET breaks down twelve separate occupations within the “Computer Occupations, All Other” category, including occupations numbered 15-1199.01 to 15-1199.12.⁸ In its response to the Director’s request for evidence (RFE), the Petitioner stated that the job responsibilities of the proffered position are so complex and unique that they do not associate with any of the separately listed positions in O*NET.

As the foregoing demonstrates, the Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into its particular position. Nevertheless, 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. That is, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position’s title or designated occupational category. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered.

A crucial aspect of this matter is whether the duties of the proffered position are described in such a way that we may discern the actual, substantive nature of the position. The Petitioner has repeatedly stated that the purpose of the proffered position is to “compute data signals and output actionable data.” The Petitioner has not defined what this means or how it fits into the context of its overall business.

Several major duties have circular descriptions that focus on outcomes or results, rather than the process undertaken to produce such outcomes or results. If the position’s purpose is to “compute data

⁶ 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 Jun. 17, 2020). Here, the *Handbook* does not provide specific information for various occupations which might be classified within the occupational category.

⁷ The *Handbook* also indicates that this occupation does not require work experience in a related occupation or typical on-the-job training. *Id.*

⁸ For more information, refer to <https://www.onetonline.org/link/summary/15-1199.00> (last visited Jun. 17, 2020).

signals and output actionable data,” the Petitioner must describe the duties with more specific information than “manipulate and analyze data,” as such a description does not meaningfully convey the duties of the position apart from its overall outcome or purpose. Examples of such circular or outcomes-based duties are as follows:

- Independently manipulating data and analyzing high volume, high-dimensionality real time bidding (RTB) data in order to identify relationships and trends.
- Build predictive models using machine learning algorithms to optimize mobile advertising campaigns.

Though the Petitioner states that real-time bidding data will be analyzed, the Petitioner has not explained what this term means. As such, the Petitioner has not clearly defined what data will be computed. Nor has the Petitioner identified from where it will be gathered, how it is gathered, or why the computing and gathering requires specialized knowledge. Furthermore, the Petitioner does not state in specific terms how the data will be used. Though the Petitioner describes the uses of the data in broad and abstract terms, such as “to identify relationships and trends,” “to discover trends and patterns” or “to find business values,” it does not provide any concrete or definitive information on the use of the data. Moreover, we read that the Beneficiary will build models using algorithms, but the Petitioner does not explain how this is done or why it requires specialized knowledge, nor do we know how these models generate optimized mobile advertising.

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 “communicate and interact across teams” or to “communicate results” to “a variety of stakeholders.” If 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 specialized.

Other duty descriptions use general, abstract, or undefined terms. Duties to “provide support,” “work with” and “collaborate” are nebulous terms because they do not clearly convey the level of involvement the Beneficiary will have in any particular task. Absent further information, we cannot determine whether the following duties require specialized knowledge:

- Communicate and interact across teams in the company to understand the underlying business problems, provide support and promote the work of the data science team to the business
- Collaborate with engineers to integrate solutions within larger engineering workflows. Effectively communicate results from ML models and statistical learning to a variety of stakeholders within R&D and product organizations.
- Work with a variety of data sources to build production-ready ML models.

The above-bulleted duties do not sufficiently convey the work performed. The Petitioner does not provide sufficient detail on the underlying business problems that the Beneficiary will “understand,” how and what solutions will be integrated, what “engineering workflows” means, or what sources of data the Beneficiary will use. Furthermore, the Petitioner has not stated how any of these duties are important to the Petitioner’s business.

Several other duties use jargon or terms of art that the Petitioner has not explained. Because it is unclear what the Beneficiary will do when he carries out these tasks, it cannot be determined whether the work involves specialized knowledge:

- Use Python and Machine Learning Algorithms and Linux to perform feature engineering and building classifier.
- Use databases including SQL like MySQL and NoSQL like Neo4j, Elasticsearch to undertake preprocessing of structured and unstructured data.
- Use Python, Machine Learning Algorithms and Tableau to perform data exploration to find business values.

The Petitioner has not explained the term “perform feature engineering and building classifier” or why the distinction between structured and unstructured data is important. Further, the Petitioner has not defined what “data exploration” or “business values” involves.

The work product documents provided by the Petitioner do not lend clarity to the nature of the proffered position. The Petitioner submitted colorful graphs and scatterplot screenshots as well as what appears to be coding and scripting screenshots. However, it is not apparent what these represent, how they are used, or what, if any, specialized knowledge was required to create them. The Petitioner has not followed this evidence up with an explanation of how or why this work requires a bachelor’s degree in business analytics.

Though the Petitioner has provided a list of duties and work product samples, the quality of the evidence and the Petitioner’s failure to connect this work to the context of its overall business diminishes its probative value. As such, it is not possible to determine what the Beneficiary will do on a day-to-day basis and whether that work requires specialized knowledge usually associated with a bachelor’s degree in a specific specialty. If we cannot ascertain the proffered position’s substantive nature, then we cannot determine whether it is a specialty occupation.

We reviewed the job postings submitted for our consideration of an industry standard. While the Petitioner contends that these positions are parallel to the proffered position, two of the three positions require significant experience beyond a bachelor’s degree. The postings appear to advertise more senior roles than the proffered position, as evidenced by requirements for a bachelor’s degree along with a range of between three to four years of additional experience. If these are parallel positions as claimed, then the Petitioner has not resolved how payment of a Level I wage to the Beneficiary correlates to the experience the position requires. If alternatively, the positions are not parallel, but rather represent a different or more specialized position than the proffered position, then the postings have no relevance in establishing an industry standard for positions located within the occupational category. In either instance, these postings suggest that the LCA may be inconsistent with the Petitioner’s claims and the evidence within the record, which further obfuscates the substantive nature of the position.

One posting indicates that the employer does not require any degree, but rather relevant experience alone qualifies a candidate for the position. Though it is possible to obtain specialized knowledge through experience alone or a combination of experience and education, the available information in the job posting is insufficient to substantiate a finding that the qualifying experience is specialized, nor is it apparent that the experience is equivalent to a bachelor’s level of education. We do not know if the years

of experience can be gained concurrently or if they must be gained consecutively. Therefore, the number of years of required experience is itself unclear from the posting. For all of these reasons, the Petitioner's submission of job postings provides us with no additional clarity on the substantive nature of the position.

We reviewed the letter from [] Chief Technology Officer [] as evidence that a degree is common to the industry. [] wrote that the proffered position requires "a bachelor's degree or higher in business analytics, computer science, or a closely related field . . . with deep mathematics background." On appeal, the Petitioner argues that the Director's decision does not reflect adequate consideration of []'s opinion.

Initially, we note that the Petitioner's shareholder update letter states that [] is the CTO of a subsidiary or affiliate of the Petitioner. Therefore, [] is not a disinterested party offering an objective industry opinion. In examining the letter, we note that [] offers little analysis to support his conclusions, but rather simply lists knowledge areas and how the knowledge could be obtained in a bachelor's degree program in business analytics, computer science, or a related field. [] does not acknowledge or explore, for example, how knowledge of programming languages like Python could be obtained through independent study, a certification course, or a computer boot camp. Though [] states that this knowledge must be obtained in a university program, he offers little support for his conclusion. We read that the proffered "position requires an individual be capable of taking large volumes of data to convert it into actionable information that will feed into an analytics pipeline for customers." [] offers no analysis or clarity as to how the data would be gathered or converted and from where, nor do we know what an analytics pipeline involves. Yet, without analysis or support, [] declares that this knowledge is "only taught at the university level."

Overall, we note that [] confuses *the ability* of a degreed person to perform the duties of the proffered position with a degree requirement *in order to* perform the duties. Though we have reviewed his opinion, it offers little in establishing the substantive nature of the position as it does not include cogent analysis of the position duties or educational requirements.⁹

Similarly, the Petitioner appears to define its position based upon the qualities of the Beneficiary. On appeal, the Petitioner states that the Director failed to note that the Petitioner already established how the qualifying fields of study listed directly relate to the duties and responsibilities of the position. The Petitioner states that it broke down the curriculum undertaken by the Beneficiary and linked the courses to the specific duties of the position, thereby establishing how they were directly related. Here, the Petitioner attempts to define its position requirements based upon the qualifications of the proposed Beneficiary. Instead of relating how each of the qualifying fields relates to the duties of the position, the Petitioner offered how each of the Beneficiary's qualifications meets the Petitioner's claimed education requirements. In so doing, the Petitioner misconstrues the statutory and regulatory requirements of a specialty occupation.

The Petitioner claims that the Beneficiary possesses the qualifications required, however, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary,

⁹ 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.*

but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent.¹⁰ Put simply, stating that a person with a bachelor's degree in the qualifying fields could perform the duties of the proffered position is not the same as stating that such a degree is required to perform those duties. We further note that the Beneficiary undertook these courses in a master's degree program, not a bachelor's degree program. Though the Petitioner claims that the position requires a bachelor's level education, its repeated references to the Beneficiary's master's degree courses indicates that the Petitioner has not clearly defined the educational requirements of its position.

The Petitioner has not sufficiently explained what the duties of the position are or why the position duties require specialized knowledge to perform them. Because we cannot determine the substantive nature of the position, we are precluded from determining that the proffered position satisfies any of the regulatory specialty-occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

III. BENEFICIARY QUALIFICATIONS

Though not a stated basis for the Director's decision, we conclude that the evidence of record does not establish that the Beneficiary is qualified to perform services in a specialty occupation. Because the Petitioner has not clearly established its minimum educational requirements for the position or established that the proffered position is a specialty occupation, we need not fully address the beneficiary qualification issue. That said, the Petitioner should be prepared to address this issue in any future H-1B filings.

The record reflects that the Beneficiary has a U.S. master's degree in business administration with a major in business analytics. The Petitioner stated that its minimum qualification for the position is a bachelor's degree in business analytics. The Petitioner offered no evidence that a major in business analytics in a master's of business administration program offers an equivalent education as a bachelor's degree in business analytics. The Petitioner does not provide an analysis of credit hours earned or courses taken in typical bachelor's degree programs in business analytics. Nor does the Petitioner compare such credit hours and courses to the Beneficiary's business administration program. We have little information on the Beneficiary's undergraduate degree or how it relates to or combines with the master's degree program such that the Beneficiary has the equivalent of a bachelor's degree in business analytics. As such, the Petitioner has not established that the Beneficiary is qualified to perform services in a specialty occupation.

IV. 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, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish

¹⁰ We are required to follow long-standing legal standards and determine first, whether the proffered position qualifies 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].").

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.