



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

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

In Re: 8821741

Date: JUNE 30, 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 “IT 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 California Service Center Director denied the petition, concluding that the record did not establish that the proffered position is a specialty occupation.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.¹ The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*.² 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

¹ Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

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

proffered position must also meet one of the following criteria to qualify as a specialty occupation position:

- (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). As this regulation 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”); *Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

II. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.³ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.

A. 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. 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. While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position is a specialty occupation.

³ On appeal, the Petitioner challenges the Director’s decision on the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), and (4). The Petitioner does not address the Director’s assessment and decision on the remaining criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, we will limit our analysis of the evidence as it relates to the criteria challenged as well as the statutory and regulatory definitions, section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii).

On the certified labor condition application (LCA),⁴ the Petitioner designated the proposed position as a Standard Occupation Classification (SOC) code 15-1121 “Computer Systems Analysts” occupation at a Level I wage. The Petitioner initially provided a 10-bullet point overview of the proffered position and stated that it required a bachelor’s degree in computer science, or other closely related field for the position.⁵ The Petitioner which has been in business since 2009 does not provide evidence corroborating this claim.

The record includes an organizational chart that depicts the position of “IT Business Analyst.” The Petitioner’s list of employees submitted with the organizational chart does not identify any employee in this position. Additionally, the record does not include evidence of prior or current employees in this position. The Petitioner does not provide evidence of the total number of people, if any, it has employed to serve in the proffered position. The record does not include evidence of the Petitioner’s normal hiring and recruitment requirements or its employment history regarding the proposed position.

Moreover, to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the Petitioner’s recruiting and hiring history. A petitioner’s perfunctory declaration of a particular educational requirement is insufficient to establish that the position is a specialty occupation. We must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires 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, or its equivalent, as the minimum for entry into the occupation as required by section 214(i)(1) of the Act.

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, and has not satisfied the statutory and regulatory definitions of specialty occupation.

B. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is

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 The Petitioner also claims that its requirement is consistent with the Department of Labor’s *Occupational Outlook Handbook (Handbook)* for this occupation, which states that “[m]ost computer systems analysts have a bachelor’s degree in a computer-related field” and that “a bachelor’s degree in a computer or information science field is common.” However, the “Computer Systems Analysts” occupation encompasses a broad base of responsibilities and duties and the required education and experience to adequately perform these duties also varies. For example, programming or technical expertise not gained through bachelor’s-level study is also acceptable as a path to enter into this occupation. *See* Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Computer Systems Analysts, <https://www.bls.gov/OOH/computer-and-information-technology/computer-systems-analysts.htm#> (last visited Jun. 22, 2020).

usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The Petitioner appears to claim that a “Computer Systems Analysts” position is categorically a specialty occupation. We disagree. The Petitioner must provide sufficient detail of the actual duties described so that those duties may be analyzed to determine if the duties are the duties of a computer systems analyst and further whether the duties as described require a bachelor’s level degree in a specific discipline, or the equivalent to perform the duties. In that regard we have reviewed the Petitioner’s description of duties,

When it filed the petition, the Petitioner provided a general overview of the proposed position with a list of 10-bullet point tasks. In its response to the Director’s request for evidence (RFE), the Petitioner also maintained the original 10 functions,⁶ but expanded its job description with narrative under each of the original functions. The Petitioner also added the domain/product focus, itemized third-party software to be optimized, and listed the postsecondary coursework from the Beneficiary’s degree associated with each duty. For example, the Petitioner indicated that the Beneficiary will “[p]articipate in and/or lead various process improvement projects to increase operational and business efficiency,” including designing, automating, and integrating internal organizational processes, database management systems, data analytics in different G-Suite applications using Google applications, JavaScript, and Web App Development. The Petitioner listed the Beneficiary’s coursework, including report writing skills and financial accounting but did not offer an analysis of how these particular courses and others are required by the described duties in order to perform them. Although we recognize that the Beneficiary will require some technological knowledge to perform the described tasks, the record does not include probative evidence that this knowledge is gained through bachelor’s-level study in a specific discipline rather than through certifications in third-party technology or experience in the industry.

Similarly, the Petitioner indicated that as part of participating in and/or leading assignments involved in the software development life cycle, project planning, upgrading, building, optimizing, allocating resources, and implementation the Beneficiary would “[d]esign, automate and optimize 3rd party software API integrations for [one of the Petitioner’s hosted products]” The Petitioner listed the third-party software involved and also listed the Beneficiary’s coursework including English comprehension and composition, entrepreneurship, introduction to management, communication skills, report writing skills, and introduction to psychology, but again did not offer an explanation of how the duties described required these courses in order to perform them. The remaining description, including the additional narrative, is similarly broad such that the duties could encompass a number of technology occupations. We understand there may be overlap between various technology occupations, however, the duties here are so broadly described we cannot ascertain either the application of knowledge needed to perform the position or the appropriate occupation and wage level

⁶ The Petitioner also submitted a role description for the proffered position indicating that the position was responsible for “automating and optimizing business operations and processes” and for “ensur[ing] operational stability and predictability” followed with a list of 8-bullet points. These duties, as well as the original list of 10 duties, are general and do not adequately convey the duties the Beneficiary will be expected to perform.

required.⁷ Without a detailed and more precise description, the record does not establish that the proposed duties are the duties of a wage Level I “Computer Services Analysts” occupation.⁸

The Petitioner has not sufficiently described the duties of the position so that those duties may be analyzed to determine if the duties are the duties of a computer systems analyst and further whether the duties require a bachelor’s level degree in a specific discipline, or the equivalent, to perform them. There are technology occupations that may be performed with a general degree (either at the bachelor or associate’s level) and certifications or undefined experience in a particular program or third-party software. There are also technology occupations that may require special skills, specific certifications, advanced knowledge, or that incorporate the duties of more than one occupation. The Petitioner has not provided relevant corroborating evidence sufficient to support its testimonial claims that the proffered position is a computer systems analyst position that requires a bachelor’s degree in a specific specialty, or its equivalent.

The Petitioner refers to work product examples as demonstrating the technical and complex nature of the position. We reviewed the work product submitted which appears to consist of sales information describing the Petitioner’s products, as well as lines of code, graphs, and screenshots without context, as well as white papers and blog posts. The Beneficiary’s role and tasks associated with the work product is not clearly set out or connected to specific duties. Moreover, the Petitioner does not sufficiently explain how these documents distinguish and differentiate the duties of the proffered position from the typical duties performed by other computer systems analysts who do not require a bachelor’s degree in a specific discipline, or its equivalent. The work product does not assist in establishing that the described duties are specialized and complex.

On appeal, the Petitioner asserts that the position evaluation authored by [redacted] Professor of Mathematics, Computer Science, and Information Systems, [redacted] was not given appropriate weight when analyzing the complexity and specialization of the proposed position. [redacted] repeats the Petitioner’s description of duties provided in response to the Director’s RFE and then states that academic programs model their curricula to impart skills in 18 different “knowledge areas” according to the *2013 Curriculum Guidelines for Undergraduate Programs in*

⁷ The duties described may relate to occupations, such as application software development (SOC code 15-1132) and business intelligence analysis (SOC code 15-1199.08). Notably, it appears some of the duties fall within higher paying occupations and thus, would require that the higher-wage occupation be designated on the certified LCA. See U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.flcdatacenter.com/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁸ The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). See Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-56) (indicating that the wage protections in the Act seek “to protect U.S. workers’ wages and eliminate any economic incentive or advantage in hiring temporary foreign workers” and that this “process of protecting U.S. workers begins with [the filing of an LCA] with [DOL].”). While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b). The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that “the petition is supported by an LCA which corresponds with the petition”

Computer Science, published by the Association for Computing Machinery (ACM).⁹ These guidelines for potential curriculums appear far too broad to establish that a particular position requires a body of highly specialized knowledge that is attained through study at a bachelor-level degree in a specific specialty, or its equivalent. Although [] opines that 2 of the 18 knowledge areas in a potential curriculum may prepare an individual to perform some of the duties of this position, he does not provide a comprehensive discussion of why this same or similar knowledge could not be attained through other methods.¹⁰

[] also states “[i]n my opinion, any of the duties listed for the position could be matched to a corresponding knowledge area, suggesting a high degree of competence necessary to perform them” and that “if any of the job duties require competence in a major knowledge area, it stands to reason that the whole of the job’s responsibilities could not be performed satisfactorily without Bachelor-level competence in Computer Science or a related technical field.”¹¹ [] concludes further that because “there is significant overlap between the prescribed duties for the position, and the general knowledge areas covered in Bachelor-level Computer Science programs, . . . any individual lacking a Bachelor’s degree (or its equivalent) in these fields would not be able to perform these duties to the degree [the Petitioner] requires for the continuous execution of its business operations.” While [] may draw inferences that certain software engineering or software development fundamental courses may be beneficial in performing certain duties of the position, we disagree with any inference that such courses, even if culminating in a computer science degree is required *in order to* perform the duties of the proffered position. Put simply, stating that a person with a bachelor’s degree in computer science could perform the duties of the proffered position is not the same as stating that such a degree is required to perform those duties. As such, []’s analysis misconstrues the statutory and regulatory requirements of a specialty occupation.¹²

On appeal, the Petitioner contends that complex specialty occupation positions are often accompanied by entry-level wage Level I designations. The Petitioner cites several occupations such as optometrist, attorney, chiropractor, mechanical engineer as such occupations that may require a bachelor’s degree, or higher, in a specific specialty upon entry in order to perform them. The Petitioner, however, has not established that a computer systems analyst occupation is categorically an occupation that requires a bachelor’s degree in a specific specialty, or its equivalent, upon entry into the position. If an individual with a general bachelor’s degree may enter the occupation, as described in the *Handbook*, the Petitioner must offer some evidence distinguishing its particular position from such positions

⁹ The Petitioner provides the table of contents for this document on appeal but does not provide pertinent excerpts, if any, for our review.

¹⁰ For example, he does not refer to the *Handbook*’s more recent information on this occupation or attempt to distinguish the *Handbook*’s report that several paths, including less than a bachelor’s degree in a specific specialty, are acceptable as a minimum to enter this occupation. Moreover, he does not discuss other relevant research, studies, or authoritative publications he utilized as part of his review and foundation for his opinion.

¹¹ Service records show that [] used a template with similar organization and these same conclusory statements as has been submitted on behalf of other petitioners regarding different occupations. The similarity in conclusions, without cogent analysis, strongly suggests that the authors of the opinions were asked to confirm a preconceived notion as to the required degrees, not objectively assess the duties of the proffered position and opine on the minimum requirements necessary to perform them.

¹² 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. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988).

within this occupation. The Petitioner's choice of a level I wage does not assist but rather hinders a conclusion that the Petitioner's particular position is distinguishable from those computer systems analyst positions that do not require a bachelor's degree in a specific specialty, or its equivalent. That is, the Petitioner's designation of the position as a wage level I computer systems analyst position demonstrates that this position is not likely distinguishable by relatively specialized and complex duties.¹³ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex and specialized. The Petitioner has not established that the nature of the described duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Upon review of the totality of the evidence submitted, the Petitioner has not established that more likely than not, the proffered position is a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Moreover, the record does not establish that the duties of the proffered position require the theoretical and practical application of highly specialized knowledge and attainment of at least a bachelor's degree in a specific specialty, or its equivalent. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

ORDER: The appeal is dismissed.

¹³ In general, a petitioner must distinguish its proffered position from others within the same occupation through the proper wage level designation to indicate factors such as the relative complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. U.S. Dep't of Labor, Emp't & Training Admin., Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.