



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

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

In Re: 9047125

Date: JULY 20, 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 Director of the California Service Center denied the petition, concluding that the evidence of record did not establish eligibility for the immigration benefit sought. On appeal, the Petitioner contends that it has established 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 sustain 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”).

## II. ANALYSIS

On appeal the Petitioner asserts that it has satisfied the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). We do not find sufficient probative evidence in the record to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), (3), or the first prong of (2). As will be discussed the Petitioner has established the second prong of the second criterion and the fourth criterion.

The second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), 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. 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.

We have carefully reviewed the duties of the proposed position. The Petitioner initially provided a general description of the Beneficiary’s proposed duties and later added explanations of the duties as the Beneficiary would be required to carry them out. The elaboration of duties when reviewed within the context of the Petitioner’s overall business operations describes a position that includes duties that are unique to the Petitioner’s business such that the position requires bachelor degrees, or higher, in specific specialties that relate directly to the duties of the position. The Petitioner has communicated (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.

Specifically, the Petitioner's description of duties and explanations of those duties within the context of its business operation demonstrate that the duties are so unique and complex that they require a higher level of understanding and expertise than a general bachelor's degree. In addition, the record includes evidence about the nature of the proffered position's work product which show the complexity and specialization of the position such that a bachelor's degree in a specific specialty is required.

When considering all these factors, the Petitioner sufficiently distinguishes the proffered position from positions within the occupation that do not require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation. And when viewed in its totality, the record establishes, that more than more likely than not, the nature of the specific duties is so unique, 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. Finally, the record establishes that the position proffered here actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

### III. CONCLUSION

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 sustained that burden.

**ORDER:** The appeal is sustained.