



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

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

In Re: 9095180

Date: JULY 2, 2020

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker

The Petitioner, a welding consumables manufacturer, seeks to temporarily employ the Beneficiary as a “welding wire process engineer” 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 record did not establish that the proffered position qualifies as a specialty occupation. The matter is now before us on appeal.

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. ANALYSIS

Upon review of the entire record, for the reasons set out below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.

The Director concluded that the Petitioner did not establish that the proffered position qualifies as a specialty occupation. In her decision, the Director thoroughly discussed the Petitioner’s failure to meet any of the four regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) – (4). Upon consideration of the record, we adopt and affirm the Director’s decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (“[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings” provided the tribunal’s order reflects individualized attention to the case).

On appeal, the Petitioner asserts that the Director did not properly review the expert opinion letter submitted in response to the request for evidence from [redacted] Professor of Industrial Engineering and Chair of Interdisciplinary Operations Research Graduate Program at the [redacted] University. Upon review, we've determined that the Petitioner's reliance on the expert opinion letter is misplaced.

In his letter, [redacted] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) lists the job duties of the proffered position provided by the Petitioner; and (3) states that the position would require a bachelor's degree, or its equivalent, in industrial engineering or a closely related field. We carefully evaluated [redacted]'s assertions in support of the instant petition but find them insufficient.

In this instance, [redacted]'s letter does not substantiate his conclusions, such that we can conclude that the Petitioner has met its burden of proof. First, [redacted] compares the duties of the proffered position to those in O*NET for "Manufacturing Engineers" and briefly reiterates that "O*NET states that most Manufacturing Engineers positions require a four-year Bachelor's Degree, and knowledge and skills in applying principles, techniques, procedures, and equipment to the design and production of various goods and services." However, he does not discuss the specific relevance of those references and does not further reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information that he may have consulted to complete his evaluation.¹ Similarly, [redacted] does not address O*NET's finding that 20% of individuals in this occupation do not have a bachelor's degree or explain how the proffered position is different from other manufacturing engineer positions such that it would require a bachelor's degree in a specific field. Additionally, we note that [redacted]'s vague reference to the knowledge and skills listed for the occupation in O*NET is not sufficient to establish that a bachelor's degree in a specific specialty is required for the position. While the position may require a specific skillset or knowledge, O*NET indicates that a bachelor's degree may be required by some employers but does not identify a specific specialty for the degree. Thus, the evidence does not support the Petitioner's reliance on this information.

On appeal, the Petitioner states that [redacted] is an expert in the field of industrial engineering and thus is not required to consult other sources of information when outlining his opinion on the educational requirements for the proffered position. The Petitioner states that [redacted]'s expertise arises from his master's degree and Ph.D. in industrial and systems engineering, more than 32 years of experience as a faculty member, more than 115 peer-reviewed papers published in leading journals, more than 3,100 citations to his work, receipt of prestigious national awards, and possession of significant industrial experience in national and multinational corporations. However, his supporting documentation indicates that most of his experience over the past 40 years has been in an academic setting within a university² and he does not provide any dates or specific information to indicate any recent relevant consulting work in the Petitioner's area of business. Moreover, [redacted] has not provided sufficient information to establish his expertise on the practices of organizations seeking to

¹ While [redacted] does reference O*NET, the Director's decision has already discussed why O*NET does not report an industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, again, we incorporate by reference the previous discussion on the matter.

² We note that there is a position of "systems analyst" at a company in Spain from 1979-1980.

hire “welding wire process engineers.” Without further clarification, it is unclear how his education, training, skills, or experience would translate to expertise regarding the current recruiting and hiring practices of an enterprise engaged in “welding and soldering equipment manufacturing” (as designated by the Petitioner in the petition) or similar organizations for “welding wire process engineers” (or parallel positions).³

Additionally, the Petitioner addresses the Director’s determination that [redacted] did not demonstrate in-depth knowledge of the Petitioner’s business operations and states that he “specifically detailed the nature of [the Petitioner’s] business operations on page 2 of his opinion, thus demonstrating that his expert opinion is formed specifically in the context of these operations.” However, the single paragraph on page 2 of [redacted]’s letter referencing the Petitioner’s business and operations is recited virtually verbatim from the Petitioner’s letter of support in the record. While this description may be accurate and appropriate, it does not adequately convey [redacted]’s knowledge of the Petitioner’s business and its operations such that he could assess the nature of the position within the appropriate context.

Further, [redacted] states that he reviewed the duties of the proffered position provided by the Petitioner and concluded that the proffered position requires a bachelor’s degree, or equivalent, in industrial engineering or a closely related field. While we appreciate his brief discussion of the generic duties provided by the Petitioner and the general core curricula covered in the industrial engineering field, [redacted]’s letter still falls short of providing a meaningful discussion of what the Beneficiary would actually do in the proffered position and how those duties actually require the theoretical and practical application of a body of highly specialized knowledge. For example, in this discussion, [redacted] only emphasized two of the listed duties for the position and stated those duties “could only be performed competently by a candidate with at least a bachelor’s degree in industrial engineering or a related area.” He then briefly stated what a student would learn in three specific courses within the industrial engineering major that would prepare a student to perform those duties. However, while he listed the duties provided by the Petitioner in his letter, [redacted] did not discuss the specifics of the particular tasks upon which the Beneficiary would work in meaningful detail. As such, we conclude that the Petitioner has not demonstrated that [redacted] adequately assessed the nature of the position and appropriately determined parallel positions based upon the job duties and level of responsibilities.

Furthermore, [redacted] states that “it is standard for a company such as [the Petitioner] . . . [and] [i]t is typical for a steel based technology and capital goods firm to hire a Welding Wire Process Engineer or someone in a similar professional position, and require the minimum attainment of a Bachelor’s Degree or higher in Industrial Engineering or a related area for the position.” However, while [redacted] states that “this type of position is a typical job placement” for students completing a bachelor’s degree in industrial engineering and “[e]mployers with openings for [this position] and similar professional positions have recruited at [his] campus, always seeking graduates with the minimum of a Bachelor’s Degree in the above fields,” he does not provide any evidence of these requirements and does not further reference, cite, or discuss any studies, surveys, industry

³ The Petitioner designated its business operations under the North American Industry Classification System code 333992, which is for “Welding and Soldering Equipment Manufacturing” and is described as an industry “primarily engaged in manufacturing welding and soldering equipment and accessories (except transformers), such as arc, resistance, gas, plasma, laser, electron beam, and ultrasonic welding equipment; welding electrodes; coated or cored welding wire; and soldering equipment (except handheld).” For additional information, see <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

publications, authoritative publications, or other sources of empirical information that he may have consulted to complete his evaluation. As such, it remains unclear how [] reached his conclusions as to the industry educational requirements for the proffered position.

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.* Consistent with *Caron Int'l*, we conclude that this evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

II. 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 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 here, and the petition will remain denied.

ORDER: The appeal is dismissed.