



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

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

In Re: 8418912

Date: MMM. DD, YYYY

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 Petitioner did not sufficiently establish that the proffered position qualifies as a specialty occupation. On appeal, the Petitioner submits additional evidence and asserts that the Director erred in the decision.

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.<sup>1</sup> Lastly,

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<sup>1</sup> 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

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).

### III. ANALYSIS

The Petitioner intends to employ the Beneficiary on a part-time basis as an “accountant” for the duration of the validity period requested. The Petitioner provided several descriptions of the job duties of the position.<sup>2</sup> For instance, in response to the Director’s request for evidence (RFE) it provided a set of five job functions with the relative percentage of time the Beneficiary will devote to each job function, as follows (verbatim):<sup>3</sup>

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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”).

<sup>2</sup> We acknowledge that the Petitioner submitted additional information for the job duties, which, for the sake of brevity, have not been included herein. However, this material has been closely reviewed and considered, as with all evidence in the record. For instance, the Petitioner also included a listing of the Beneficiary’s previous coursework for the purpose of correlating 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].”).

<sup>3</sup> We observe that the first two job functions within the Petitioner’s job descriptions largely quote from the Occupational Information Network (O\*NET) summary report for “Accountants,” <https://www.onetonline.org/link/summary/13-2011.01> (last visited May 29, 2020).

1. Prepare, examine, and analyze accounting records, financial statements, and other financial reports to ensure accuracy, completeness, and conformance to reporting and procedural standards by applying knowledge of US GAAP. (35%)
2. Analyze business preparations, trends, costs, revenues, financial commitments, and obligations to project future revenues and expenses for planning purposes. (30%)
3. Assist with the company's non-payroll related company's tax returns and internal and annual audit and Coordinate with CPA firm to handle tax issues. (15%)
4. Review and analyze accounting records, such as accounts payable and receivable, and engage in customer relationship in connection with maintenance and discrepancies of accounts. (10%)
5. Responsible for reconciliation of all company's bank accounts, including the company's main operating accounts. (10%)

The Petitioner's initial letter submitted in support of the petition specified that the minimum requirement for the position is a bachelor's degree in accounting, finance, business administration or a related degree. In other material, the Petitioner specified that a bachelor's degree in accounting or finance was needed for entry into the position.

### III. ANALYSIS

Upon review of the record in its totality, we conclude that the Petitioner has not sufficiently established the services in a specialty occupation that the Beneficiary would perform during the requested period of employment, which precludes a determination of whether the proffered position qualifies as a specialty occupation under sections 101(a)(15)(H)(i)(b), 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(i)(A)(1), 8 C.F.R. § 214.2(h)(4)(ii) and (iii)(A).<sup>4</sup>

From the outset, we conclude that the claimed requirement of a bachelor's degree in business administration without further specialization 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 and closely 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, without further specification, does not establish the position as a specialty occupation. *Cf. 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. 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

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<sup>4</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. Although we may not discuss every document submitted, we have reviewed and considered each one.

position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a conclusion that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). *See also Irish Help at Home LLC v. Melville*, 13-cv-00943-MEJ, 2015 WL 848977 (N.D. Cal. Feb. 24, 2015), *aff'd*, 679 F. App'x 634 (9th Cir. 2017). For this reason alone, the proffered position is not a specialty occupation, and this petition cannot be approved.

Even if we set this foundational deficiency aside we would still conclude that the proffered position is not a specialty occupation, as the Petitioner has not sufficiently established the substantive nature of the proffered position so that we can discern whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. If we cannot determine what the Beneficiary would actually be doing, then we cannot ascertain the substantive nature of the proffered position, let alone determine whether it is a specialty occupation.

On the labor condition application (LCA)<sup>5</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Accountants and Auditors" corresponding to the Standard Occupational Classification code 13-2011. According to DOL's Occupational Information Network (O\*NET), the core duties of accountants include "[a]nalyze financial information and prepare financial reports to determine or maintain record of assets, liabilities, profit and loss, tax liability, or other financial activities within an organization."<sup>6</sup>

The Petitioner was established in 2015 as a subsidiary of a company located abroad, and "is engaged in promoting and marketing the core products of our [parent] Company, including motorcycle parts and accessories for ATV, Dirt Bike, Mini Dirt Bike, Karting and Camper Trailer." Its "products are made available through Amazon/eBay store and other social media formats." The Petitioner notes that it is "currently in its start-up stage of expansion," and needs "additional services of an [a]ccountant to provide solid data to render recommendation for all of our further expansion." However, the Petitioner's claim that it intends to expand its business operations in the future is not sufficient to demonstrate that the proffered position qualifies as a specialty occupation. A petitioner must establish eligibility at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). A petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).<sup>7</sup> The Petitioner has not done so here.

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<sup>5</sup> A petitioner submits the LCA to the U.S. Department of Labor (DOL) 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).

<sup>6</sup> O\*NET Summary Report for "Accountants," <https://www.onetonline.org/link/summary/13-2011.01> (last visited May 29, 2020).

<sup>7</sup> The H-1B classification is not intended as a vehicle for employers to bring in temporary workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. 63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998).

The Petitioner secured two residential leases in Texas; one for office space where the Beneficiary is to be employed, and another for warehousing space for its products.<sup>8</sup> The Petitioner submitted an organization chart which reflects that it employs two individuals as warehouse personnel, and the chairman of the organization who works from China and the United States. Other positions within the organization chart, including an HR manager, sales manager/staff, a marketing specialist, and the proffered position – accountant, are all marked as positions “to hire.” Even though the Petitioner asserts that the Beneficiary will “analyze financial reports, and evaluate and analyze monthly financial data and operation supplies’ cost, review journal entries and maintain different types of financial records,” and will “submit his findings/analysis and reports to the [c]hairman and CPA,” the record does not include sufficient evidence of what these duties actually entail within the Petitioning entity’s organizational construct.

For instance, the Petitioner states that the Beneficiary “will provide assistance and will be under the direction of the [c]hairman and the CPA,” and that the chairman will provide “off-site” supervision over the Beneficiary “through regular emails, phone calls, weekly video calls and site visitations (as needed) and/or CPA as needed.” The Petitioner states that it employs a CPA on a “contractual basis,” and has submitted tax returns indicating that they were prepared by an accounting firm. However, the Petitioner has not demonstrated that it employs a CPA to perform ongoing accounting for the organization.

Moreover, the Petitioner claims that the Beneficiary will spend at least 30% of his time “analyz[ing] business preparations, trends, costs, revenues, financial commitments, and obligations to project future revenues and expenses for planning purposes,” but the record does not reflect that the Petitioner will employ staff to perform basic bookkeeping and accounting tasks for the “start-up” organization, other than the Beneficiary. There is no provision in the law for specialty occupations that permits the performance of non-qualifying duties. While we will view the performance of duties that are incidental to the primary duties of the proffered position as acceptable when they are unpredictable, intermittent, and of a minor nature, anything beyond such incidental duties, e.g., predictable, recurring, and substantive job responsibilities, must be specialty occupation duties or the proffered position as a whole cannot be approved as a specialty occupation.

On appeal, the Petitioner asserts “the duties of the position being offered is NOT a bookkeeper and account clerk position,” noting “[s]ome [b]ookkeeper and account clerks may have the same title of an “[a]ccountant,” but that does not mean that [it] is similar to an [a]ccountant position.” However, many of the proffered position’s job duties appear to be in line with the general duties of the occupational category “Bookkeeping, Accounting, and Auditing Clerks” corresponding to the Standard Occupational Classification code 43-3031.00. According to O\*NET, the core duties of this category include “Compute, classify, and record numerical data to keep financial records complete. Perform any combination of routine calculating, posting, and verifying duties to obtain primary financial data for use in maintaining accounting records. May also check the accuracy of figures,

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<sup>8</sup> Notably, each residential lease stipulates “[t]he demised premises shall be used and occupied by Lessee exclusively as a private single family residence, and neither the premises nor any part thereof shall be used at any time during the term of this lease by Lessee for the purpose of carrying on any business, profession, or trade of any kind, or for any purpose other than a private single family residence.”

calculations, and postings pertaining to business transactions recorded by other workers.”<sup>9</sup> Here, the proffered position’s duties include “resolving all bank reconciliation issues,” “[a]dministering the recordkeeping for the company’s bank account and trust account and deposit and disperse funds and required,” “[c]onduct[ing] daily invoicing functions, resolving billing errors, and updating financial databases,” “check all data (sales data and inventory data),” and “[p]erform collection functions, processing incoming payments, monitoring accounts to identify [when] overdue payments [are] received.” Therefore, we are left to question the validity of the Petitioner’s assertions, and the remainder of the Beneficiary’s claimed duties. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

While the proffered position may include duties which comport, in part, with duties associated with the “Accountants and Auditors” occupational category, such as “collecting, analyzing and organizing accounting data, adjusting general ledger accounts to conduct month/annual end close activities,” the record does not include sufficient evidence of what these duties actually entail. For instance, the Petitioner asserts that the Beneficiary will “run different types of reports by different ways to gather certain information which the Financial Controller needs,” but the Petitioner has not demonstrated that it actually *employs* a financial controller. The Petitioner provides copies of “sample work results,” which appear to be product invoices for customers, retail sales reports, and a basic income statement. However, the Petition did not specifically identify financial reporting requirements within its organization that are so complex or unique that only a specifically degreed individual could perform them. That is, the Petitioner failed to establish how the Beneficiary’s responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor’s degree in a specific specialty, or its equivalent. The duties as presented within the context of the Petitioner’s business operations are not sufficient to establish the actual, substantive nature of this position.

The letter from Professor S- does not cure this deficiency. In his letter, the professor describes the credentials that he asserts qualify him to opine upon the nature of the proffered position. We carefully evaluated the professor’s assertions in support of the instant petition but determine that the Petitioner’s reliance on his letter is misplaced. For instance, the professor opines “[b]ased on my experience in the business and accounting field, I am able to confirm that the position of [a]ccountant with [the Petitioner] is unquestionably a specialty occupation requiring the services of someone with at least a [b]achelor’s degree in accounting or a related field.” Notably, the professor does not discuss the

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<sup>9</sup> O\*NET Summary Report for “Bookkeeping, Accounting, and Auditing Clerks,” <https://www.onetonline.org/link/summary/43-3031.00> (last visited May 29, 2020). We also observe that that the “Bookkeeping, Accounting, and Auditing Clerks” occupations are Job Zone Three occupations as described in the O\*NET. The O\*NET material about the education level for Job Zone Three states “[m]ost occupations in this zone require training in vocational schools, related on-the-job experience, or an associate’s degree.” See O\*NET Online Help, <https://www.onetonline.org/help/online/zones#zone3> (last visited May 29, 2020). According to the O\*NET, these occupations do not require at least a bachelor’s degree.

applicability of the Petitioner's initial position requirements which specified that a bachelor's degree in business administration would suffice for entry into the position.<sup>10</sup>

We also note that the professor provided a list of the job duties, which he quotes verbatim from the job duties presented in the petition, which we have previously discussed. There is no indication that he possesses any knowledge of the Petitioner's proffered position beyond the Petitioner's job descriptions that seem to include many basic bookkeeping and accounting clerical duties. The professor does not discuss the duties in the specific context of the Petitioner's business, and thus, his level of familiarity with the actual job duties as they would be performed in the context of the Petitioner's business has not been substantiated. For instance, the professor does not relate his conclusions to specific, concrete aspects of the Petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position at issue. Moreover, the record does not include any relevant research, studies, surveys, or other authoritative publications as part of his review and/or as a foundation for his opinion. Therefore, we must question the basis of his ultimate conclusion about the minimum educational requirement for this particular position.

We may, in our discretion, use advisory opinion statements submitted as expert testimony. 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. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion we discount the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For the sake of brevity, we will not address other deficiencies within the professor's analyses of the proffered position.

To qualify for an H-1B visa, the Petitioner must establish that its proffered position is a specialty occupation. Here, the record does not establish the substantive nature of the proffered position, which therefore precludes a conclusion 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 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.<sup>11</sup>

### III. CONCLUSION

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<sup>10</sup> As previously discussed, the Petitioner's claim that a bachelor's degree in business administration is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a conclusion that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

<sup>11</sup> 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.

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.