



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

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

In Re: 8867849

Date: JULY 2, 2020

Appeal of Vermont Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker

The Petitioner, an information technology consulting company, seeks to temporarily employ the Beneficiary as a “computer programmer” 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 Vermont 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. 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. THE PROFFERED POSITION

In response to the Director’s request for evidence (RFE), the Petitioner submitted a list of job duties for the proffered position stating that the Beneficiary will engage in programming using SAS software, generate reports and analyze clinical trial data; create SAS programs to develop and validate the safety and efficacy related tables, listings, and figures; create primary and validation programs; develop, test, debug, and deploy the programs in coordination with other line functions as per SOPs; expand or modify existing programs for efficiency and reusability; develop and maintain datasets; create analysis files and reports tables, listings, and figures; prepare specifications and process flow diagrams and develop programming code logic flowcharts; apply SDLC principles in developing programs; create and review SDTM Mapping Specifications and create and validate SDTM domains; write specification for the analysis datasets and reports generation; maintain study documentation; document and revise system design procedures, test procedures, and programming standards; extract data from various databases; involved in creating and validating the macros per SDLC requirements; prepare reports to assist management in problem analysis and submit recommendations for solutions; and store, retrieve, and manipulate data for analysis and reporting. The Petitioner also included tasks the Beneficiary would perform in carrying out each duty.

The Petitioner indicated that the minimum entry requirement for the proffered position is a bachelor’s degree, or equivalent, in computer science, computer engineering, software engineering, computer applications, information systems/technology, or a related field.

III. ANALYSIS

For the reasons set out below, we have determined that the proffered position does not qualify as a specialty occupation.¹ Specifically, the record does not: (1) describe the proffered position in sufficient detail; and (2) establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we will 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.³

On the labor condition application (LCA)⁴ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Programmers" corresponding to the Standard Occupational Classification (SOC) code 15-1131. Thus, we reviewed the *Handbook's* subchapter entitled "How to Become a Computer Programmer," which states, in pertinent part, that most computer programmers have a bachelor's degree in computer science or a related subject.⁵ According to the *Handbook*, some employers hire workers with an associate's degree and some employers hire workers who have other degrees or experience in specific programming languages.⁶ The *Handbook* does not specify a degree level (e.g., associate's degree) for these "other degrees."

The *Handbook*, therefore, does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions.

The Petitioner cited to DOL's Occupational Information Network (O*NET) summary report for "Computer Programmers" listed as SOC code 15-1131.00 for our consideration under this criterion.

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

² The Petitioner submitted documentation in support of 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.

³ We do not maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. Nevertheless, to satisfy the first criterion, 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.

⁴ A petitioner submits the LCA to 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).

⁵ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Computer Programmers <https://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited June 25, 2020).

⁶ *Id.*

Though relevant, the information the Petitioner submits from O*NET does not establish the Petitioner's eligibility under the first criterion, as it does not establish that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required. The summary report provides general information regarding the occupation; however, it does not support the Petitioner's assertion regarding the educational requirements for these positions. For example, the Specific Vocational Preparation (SVP) rating, which is defined as "the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation," cited within O*NET's Job Zone designates this position as having an SVP 7 < 8. This indicates that the occupation requires "over 2 years up to and including 4 years" of training.⁷ While the SVP rating provides the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.⁸ The O*NET summary report for this occupation also does not specify that a degree is required, but instead states, "most of these occupations require a four-year bachelor's degree, but some do not." Similar to the SVP rating, the Job Zone Four designation does not indicate that any academic credentials for Job Zone Four occupations must be directly related to the duties performed.

Further, we note that the summary report provides the educational requirements of "respondents." However, the respondents' positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the "education level" for the respondents must be in a specific specialty.⁹ Thus, the Petitioner's reliance on the 88% of "respondents" claiming to hold at least a bachelor's degree as a demonstration that a bachelor's degree is the *normal* requirement for the occupation is misguided. A requirement for a bachelor's degree alone is not sufficient. Instead, 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.*, 484 F.3d at 147 (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position").

O*NET, therefore, also does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions.

The record lacks sufficient probative evidence to support a conclusion that the proffered position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. For the aforementioned reasons, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

⁷ This training may be acquired in a school, work, military, institutional, or vocational environment. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

⁸ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

⁹ Nor is it apparent whether these credentials were prerequisites to these individuals' hiring.

B. Second Criterion

The second criterion presents two, alternative prongs: “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[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry establish that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989) (considering these “factors” to inform the commonality of a degree requirement)).

As noted, the *Handbook* does not indicate that a bachelor’s degree in a specific specialty is a common requirement within the industry for parallel positions among similar organizations. Also, the Petitioner did not submit evidence from an industry professional association or from firms or individuals in the industry indicating such a degree is a minimum requirement for entry into the position. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry attesting that such firms “routinely employ and recruit only degreed individuals.”

The Petitioner submitted an expert opinion letter, authored by [REDACTED], Professor in the School of Electrical Engineering and Computer Science at [REDACTED] University. In his letter, [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) lists job duties of the proffered position provided by the Petitioner; and (3) states that these duties require at least a bachelor’s degree in computer science, computer information systems, or a related field. We carefully evaluated [REDACTED]’s assertions in support of the instant petition but find them insufficient.

[REDACTED] states that his assessment is based upon documentation provided by the Petitioner. While [REDACTED] provides a brief, general description of the Petitioner’s business activities, he does not demonstrate in-depth knowledge of its operations or how the duties of the position would actually be performed in the context of its business enterprise. On appeal, the Petitioner addresses the Director’s determination that [REDACTED] did not demonstrate in-depth knowledge of the Petitioner’s business operations and states that the “RFE did not require the aforementioned qualification from an expert.” The Petitioner further addressed the Director’s determination that [REDACTED] did not provide evidence to support his conclusions and states that “[t]he professor provided several pages of documentation in this regard, as well as the “statistical evidence or other documentation to support the

professor's findings" . . . a simple and reasonable review of the Professor's Expert Opinion, part of 36 pages provided by the Professor which contained the aforementioned information on his qualifications, explanations, evidence, documents, and clarifications were indeed provided." However, the single paragraph on page 1 of []'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 []'s knowledge of the Petitioner's business and its operations such that he could assess the nature of the position within the appropriate context. In addition, the documentation provided with []'s expert opinion letter only includes an additional letter from the University Registrar and another from the Dean of the [] College of Engineering and Technology, three pages of the [] University Undergraduate Catalog 2014-15, and []'s Curriculum Vita. Thus, there is no documentation in the record to support []'s conclusions.

Further, [] lists the duties of the proffered position and states that "[t]he skills, knowledge, and analytical thinking acquired through the acquisition of a Bachelor's degree or its equivalent are considered necessary by people in the industry seeking to hire a Computer Programmer, and thus the degree is considered an industry standard requirement for the position." However, he does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation. Thus, 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) and, for the sake of efficiency, hereby incorporate this conclusion into our analysis of the remaining specialty-occupation criteria.¹⁰

The Petitioner has not provided sufficient evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

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. On appeal, the Petitioner does not assert eligibility under this prong of the criterion; therefore, further discussion is unnecessary. The Petitioner has not satisfied the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

¹⁰ We hereby incorporate our discussion of []'s letter into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

C. 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.

In response to the RFE, the Petitioner submitted documentation it claims pertains to its other employees in the proffered position. The Petitioner submitted education information for various individuals, H-1B approval notices for some of those individuals, and a list of job duties for one of the individuals. The Director concluded that the evidence was not sufficient to satisfy this criterion because the Petitioner did not demonstrate that these individuals worked in the same capacity as the Beneficiary.

On appeal, the Petitioner contends that the Director imposed an additional requirement of "job duties" for the other employees, that is not noted in the criterion requirement itself. However, the criterion requires that the Petitioner demonstrate that it normally requires a bachelor's degree in a specific specialty, or its equivalent, *for the position*. That is, the Petitioner must demonstrate that the imposed requirements apply to previously hired employees in the same position as the one proffered here. Given that the Petitioner did not provide information pertaining to the job duties of its other employees, it is unknown whether their duties and responsibilities are the same or similar to the proffered position. Nor does the record establish that those individuals' credentials were a prerequisite to their hiring.

Regardless, on the Form I-129 the Petitioner indicated that it has 18 employees in the United States and did not provide the total number of people it has employed to serve in the proffered position. Consequently, it cannot be determined how representative the Petitioner's claim regarding other employees is of the Petitioner's normal recruiting and hiring practices. 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.

Moreover, the record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. *See Defensor*, 201 F.3d at 387-88. Were we limited solely to reviewing a petitioner's claimed self-imposed requirements, an organization could bring any individual with a bachelor's degree to the United States to perform any occupation as long as the petitioning entity created a token degree requirement. *Id.*

We conclude that the Petitioner did not provide sufficient documentary evidence to support the assertion that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. The Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

We reviewed the Petitioner's statements regarding the proffered position; however, while the Petitioner provided a list of job duties for the proffered position, along with tasks the Beneficiary would perform in carrying out those duties, it has not sufficiently developed relative specialization or complexity as an aspect of the proffered position. That is, the Petitioner has not explained in detail how the nature of the duties such as those listed above and additional tasks such as: create or generate various reports using the data from the users to depict current patterns and predict future changes; analyze or read the clinical trial data available and reports generated; test the programs developed to make sure that they match the SOPs followed in end user system; debug the SAS program using SAS debugging technique to correct existing errors in the program; deploy the SAS program in the end user system to make it available for the SAS end users by using the version control tool GIT; add new code to the existing SAS programs; delete some part of the existing code in SAS programs; create multiple datasets by writing the SAS programs based on the SDTM standard; develop the custom analysis datasets as per requirements; generate different tables for the safety and efficacy analysis for different deliverables; develop the customized listings as per user requirements; develop various data flow diagrams that accurately represent the flow of trail data in the company; develop business requirement documents, design documents, and process documents; involved in planning requirement gathering and analysis; involved in validation the SDTM domains; involved in writing the specifications for analysis datasets for creating tables, listings, and figures for different deliverables; and develop the documentation of macros for future reference are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or its equivalent.¹¹ These listed duties, when read in combination with the evidence found in record of proceedings, suggest that the nature of this particular position is not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or its equivalent.

On appeal, the Petitioner contends that the prevailing wage of the proffered position should be given due consideration when determining whether it is a specialty occupation. In other words, the Petitioner implies that a higher-level wage in such an occupation indirectly shows the complexity of the position. However, a Level II wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

We again refer to the expert opinion letter authored by [REDACTED]. [REDACTED]'s opinion letter does not substantiate his conclusions, such that we can conclude that the Petitioner has met its burden of proof. First, [REDACTED] does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation.

Further, [REDACTED] states that he reviewed the duties of the proffered position provided by the Petitioner and concluded that "[t]he position of Computer Programmer has responsibilities and

¹¹ While the Petitioner provided numerous duties and tasks for the proffered position, we will not list each one. We note that this is not an exhaustive list of all tasks for which the Petitioner has not explained the requirement for the theoretical and practical application of a body of highly specialized knowledge. The Petitioner should not assume that any duties or tasks not listed here are otherwise persuasive.

authority commensurate with professional standing.” While we appreciate his brief discussion of the generic duties provided by the Petitioner, [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 his discussion [REDACTED] restated several of the listed duties but did not provide any analysis of their complexity or how those duties are so specialized and complex as to require a bachelor’s degree in a specific specialty. He then briefly stated that a bachelor’s degree program in computer science, computer information systems, or a related field 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. Again, 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).

Accordingly, we conclude that the Petitioner has not established that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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.

ORDER: The appeal is dismissed.