



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

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

In Re: 11008542

Date: SEPT. 28, 2020

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner, an artificial intelligence and information technology consulting company, seeks to temporarily employ the Beneficiary as a “marketing manager & research analyst” under the H-1B nonimmigrant classification for specialty occupations. 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. THE PROFFERED POSITION

The Petitioner seeks to employ the Beneficiary as a marketing manager and research analyst. In its initial letter of support, the Petitioner provided a job description for the proffered position which identified the primary duties and responsibilities of the Beneficiary.¹ The Petitioner indicated that the minimum entry requirement for the proffered position is a bachelor’s degree, or equivalent, in business, marketing or a related field. In response to the Director’s request for evidence (RFE), the Petitioner narrowed its minimum educational requirement to at least a bachelor’s degree in business administration.

III. ANALYSIS

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

Preliminarily, we note that the Petitioner states that a bachelor’s degree in business administration would be sufficient to enter into the position. We note generally that a claimed entry requirement for at least a bachelor’s degree, or equivalent, in business administration, without more, is inadequate to establish that the proffered position qualifies as a specialty occupation.² A petitioner must demonstrate that the

¹ For the sake of brevity, we will not quote the job description; however, we have closely reviewed and considered it.

² A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor’s or higher degree in business administration with a concentration in a specific field, or a bachelor’s or higher degree in business combined with relevant education, training,

proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position. Thus, the mere requirement of a general degree, such as business administration, without further specification, does not establish the position as a specialty occupation.³

Therefore, if a bachelor's degree in business administration is sufficient to enter into the proffered position, it cannot be concluded that the proffered position requires anything more than a general bachelor's degree. Accordingly, the proffered position does not qualify under the definition of a specialty occupation and the appeal must be dismissed on this basis alone. Even setting aside the foregoing analysis, we still conclude that the proffered position is not a specialty occupation because the evidence of record does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4).

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.⁴

The Petitioner designated the position on the labor condition application (LCA) as a Standard Occupation Classification (SOC) code 13-1161, "Market Research Analysts and Marketing Specialists" occupation, at a Level II wage.⁵ The Petitioner asserts that the duties of the proffered position are most closely aligned with the generalized duties listed in the *Handbook* for "Market Research Analysts." The *Handbook's* subchapter entitled "How to Become a Market Research Analyst" does not indicate that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required for entry into market research analysts' positions.

In the initial summary of this subchapter, the *Handbook* recognizes that "[m]ost market research analysts need at least a bachelor's degree" while also reporting that "[s]ome research positions may require a

and/or experience could, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position.

³ *Royal Siam Corp.*, 484 F.3d at 147 (a general-purpose bachelor's degree in business may be a legitimate prerequisite for a particular position, but such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation). See also *Irish Help at Home LLC v. Melville*, No. 13-cv-00943-MEJ, 2015 WL 848977 (N.D. Cal., Feb. 24, 2015), *aff'd* 679 Fed. App'x 634 (9th Cir. 2017).

⁴ 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.

⁵ 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).

master's degree" and that "[s]trong math and analytical skills are essential."⁶ Thus, generally these positions may require a bachelor's degree and some skills, but not a bachelor's degree in a specific specialty, or its equivalent. Although the *Handbook* also reports that "[m]arket research analysts typically need a bachelor's degree in market research or a related field," it then adds that "[m]any have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications."⁷

The *Handbook*'s observation that disparate fields of study, including statistics, computer science, and the social sciences, may qualify a worker to enter positions in the "Market Research Analysts" occupational category indicates that there is no normal minimum entry requirement that the bachelor's or higher degree be *in a specific specialty*, or its equivalent. That is, the *Handbook* does not describe the normal minimum educational requirement for the occupation in a categorical manner, other than recognizing that these occupations generally require a bachelor's degree. Here, the *Handbook* does not establish that a bachelor's degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into the occupational category.

On appeal, the Petitioner relies on the DOL's Occupational Information Network (O*NET) summary report for "Market Research Analysts and Marketing Specialists," to support its assertion that a bachelor's degree in a specific specialty is the normal minimum requirement for entry into the position. The O*NET Summary Report, however, does not establish that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required. It provides general information regarding the occupation, but it does not support a conclusion that the proffered position requires a bachelor's degree in a specific specialty, or the equivalent.

Instead, O*NET assigns these positions a "Job Zone Four" rating, which states "most of these occupations require a four-year bachelor's degree, but some do not." Moreover, 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. In addition, the specialized vocational preparation (SVP) rating designates this occupation as 7 < 8. An SVP rating of 7 to less than ("<") 8 indicates that the occupation requires "over 2 years up to and including 4 years" of training. While the SVP rating indicates 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, experience, and formal education. The SVP rating also does not specify the particular type of degree, if any, that a position would require.⁸ Moreover, the respondents' positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Furthermore, the graph in the summary report does not indicate that the "education level" for the respondents must be in a specific specialty. For all of these reasons, O*NET does not establish the proffered position as a specialty occupation.

The Petitioner submitted a letter prepared by [redacted] Evaluator with [redacted]
[redacted] and Professor of Mathematics and Computer Science at

⁶ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Market Research Analysts, at <https://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm> (last visited Aug. 14, 2020).

⁷ *Id.*

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

[redacted] University, to understand why or how the duties described require a bachelor's degree in a specific specialty, or its equivalent. [redacted] repeats the Petitioner's initial brief description of the proposed duties and opines that the duties of the proffered position "cannot be performed by a person who does not possess a Bachelor's degree in Business Administration, Computer Information Systems, or related analytic discipline with additional relevant extensive professional experience."

As previously noted, even if established by the evidence of record, the requirement of a bachelor's degree in business administration is inadequate to establish that a 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. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). In addition to demonstrating that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, we interpret 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. We have consistently stated that, 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.*, 484 F.3d at 147.

Moreover, [redacted] introduces a new field – computer information systems – not previously identified as a prerequisite by the Petitioner for entry into the proffered position. His conclusion that the duties of the position cannot be performed by an individual who does not possess such a degree raises further questions regarding the true minimum requirements for the position. As previously noted, the Petitioner indicated preliminarily that it would accept a bachelor's degree in business or marketing, then later narrowed that requirement to a bachelor's degree in business administration. [redacted]'s conclusion that a degree in computer information systems is a mandatory field undermines the Petitioner's assertion that a bachelor's degree in a specific specialty, or equivalent, is normally the minimum requirement for entry into the particular position.

For the reasons discussed above, the letter from [redacted] does not support the Petitioner's assertion that the proffered position qualifies as a specialty occupation. As a matter of discretion, we may 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, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.*

The Petitioner has not provided sufficient documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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 contemplates 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.”⁹

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. In addition, the Petitioner submitted no evidence from the industry’s professional association or firms or individuals in the industry to establish that a specialty degree requirement exists in the industry.

We again turn to the opinion letter by [REDACTED]. First, we note that the professor did not discuss the duties of the proffered position in any substantive manner beyond what was detailed in the Petitioner’s letter. There is no indication that he possesses any knowledge of the Petitioner’s proffered position other than through his review of the provided job description. Further, there is no indication that he has conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the Petitioner’s industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on *those* specific requirements. [REDACTED] does not reference, cite, or discuss studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation.

Even assuming that he possessed expertise on the degree requirements for the position, we still find [REDACTED]’s letter insufficient. Like the Petitioner, he opines that the proffered position requires at least a bachelor’s degree in business administration, without specifying any particular concentration for this broad-based, general degree. Once again, this requirement will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147.

⁹ 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)).

For the reasons discussed, we find that the opinion letter provided lends little probative value to the matter here. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795. However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (“[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to ‘fact’ but rather is admissible only if ‘it will assist the trier of fact to understand the evidence or to determine a fact in issue.’”).

Without more, 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

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which 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).

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.

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.* 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.

Here, the Petitioner provides no evidence pertaining to its hiring history for the proffered position. Although the letter from [REDACTED] the Petitioner's Vice President of Marketing, states that the company has always hired candidates with a minimum of a bachelor's degree in business or marketing for similar roles, no evidence to support this assertion was submitted.

The Petitioner did not submit any evidence of previous or current employees in the same position as the Beneficiary's proffered position. As such, the Petitioner did not submit probative evidence that

demonstrates the academic qualifications of individuals previously or currently employed in a similar administrative services coordinator position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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.

As discussed, neither the *Handbook* nor another authoritative source indicates that a bachelor's degree in a specific specialty, or the equivalent, is normally required for positions located within this occupational category, and the Petitioner's description of the proffered position's duties provides insufficient information to determine whether the nature of the position is so specialized and complex that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

Nevertheless, we have again reviewed the duties of the proffered position in full. The descriptions do not detail the specialized and complex nature of specific duties the Beneficiary will perform. Although some tasks may connote a requirement of familiarity with general business principles, including marketing knowledge, the record is insufficient to establish that the duties require anything more than a few basic courses and a broad educational background. While a few such courses may be beneficial in performing certain duties of the position, the Petitioner, who bears the burden of proof, has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The Petitioner does not develop relative specialization and complexity as an aspect of the proffered position. The proposed duties do not include a meaningful discussion of what the Beneficiary will actually be required to do in the proffered position and how those duties require the theoretical and practical application of a body of highly specialized knowledge. The Petitioner has not established that the proffered position is more specialized and complex or unique than a marketing manager and research analyst position that requires only a general bachelor's degree, such as a bachelor's degree in a business-related field.

We again reviewed [redacted]'s position evaluation wherein he opines that the duties of the proffered position "cannot be performed by a person who does not possess a Bachelor's degree in Business Administration, Computer Information Systems, or related analytic discipline with additional relevant extensive professional experience." [redacted] repeats the Petitioner's description of duties and concludes with no substantive analysis that the duties of the position are specialized and complex and require an individual with a bachelor's degree in such fields.

[redacted]'s conclusion does not acknowledge or discuss other methods that appear to be readily available such as a general bachelor's degree or a bachelor's degree in a number of disparate fields to perform the duties described. Again, as a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. For the reasons discussed, the position evaluation proffered here does little to assist in establishing that the proposed

position is specialized and complex or unique and satisfies the statutory and regulatory definitions of a specialty occupation.

Finally, we acknowledge the Petitioner's submission of documentation relating to its patented technologies as well as contractual agreements demonstrating demand for its services. While acknowledged, the majority of this information is without context or explanation. The Beneficiary's role and tasks associated with this documentation is not clearly connected to specific duties. In addition, this documentation does not assist in establishing that the described duties are specialized and complex.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. While the position may require that the Beneficiary possess some skills and technical knowledge in order to perform the duties, the Petitioner has not sufficiently explained how the identified tasks elevate the position to one so specialized and complex that a specialty degree is required to perform them.

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).

IV. CONCLUSION

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. In visa petition proceedings, it is a 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.