



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

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

In Re: 8991529

Date: JULY 8, 2020

Appeal of California Service Center Decision

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

The Petitioner, an information technology consulting firm, seeks to temporarily employ the Beneficiary as a “business system analyst” 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 California Service Center Director denied the petition, concluding that the Petitioner had not established that the proffered position is a specialty occupation. On appeal, the Petitioner asserts that the Director erred and that the proffered position is a specialty occupation.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will 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 and adds a non-exhaustive list of fields of endeavor.

II. ANALYSIS

For the reasons discussed below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, as a result of the Petitioner's own requirements, the proffered position does not meet the statutory or regulatory definition of a specialty occupation.

The record must establish that the performance of the duties of the proffered position requires both the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree *in a specific specialty*, or its equivalent, as the minimum for entry into the occupation. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). In other words, 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. Here, the Petitioner indicated in the initial filing and again in response to the Director's request for evidence (RFE), that the minimum education required for the proffered position is a "Bachelor's degree in Commerce and Post Graduate Diploma in Business Administration from India."

The Petitioner also provides an opinion letter from [REDACTED] who concludes that the proffered position "should essentially acquire (*sic*) a bachelor's degree in business or associated field of discipline." According to Service records, the professor has been employed by the Petitioner as an H-1B nonimmigrant since April of 2016.² Furthermore, the professor's resume submitted with his letter indicates that he is employed as the Petitioner's CEO. As the professor appears to be employed as an officer of the petitioning entity, the evidence strongly suggests that the professor seeks to confirm the Petitioner's preconceived notion as to the requirement of business-related degrees, not objectively assess the proffered position and opine on the minimum bachelor's degree required, if any. While we will review the opinion presented, we conclude the analysis presented therein has little probative value.

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.* For the sake of brevity, we will not address other deficiencies within the professor's analyses of the proffered position.

On appeal, the Petitioner reiterates its previously stated requirements that a "Bachelor's degree in Commerce and Post Graduate Diploma in Business Administration from India" is required to perform the duties of the proffered position, and emphasizes that the Beneficiary possesses such credentials.³ The Petitioner asserts on appeal:

¹ The Petitioner submitted documentation to support 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.

² See [REDACTED], [REDACTED] and [REDACTED]

³ The Petitioner's CEO, [REDACTED] also provides another letter in which he evaluates the Beneficiary's foreign and United States education credentials, along with letters outlining her prior work experience, concluding that the Beneficiary's "level of expertise is at least comparable to that of a graduate of a domestic Management Information Systems." While the professor's letter identifies an area of study within the information technology field as part of his analysis, he does not specify the particular degree level (e.g. associate's, bachelor's, or master's) that he believes the

In the instant case, the minimum level of education required by [the Petitioner] and by the general current industry standards, to perform the duties of a Business System Analyst position with any degree of efficiency and cost-effectiveness, is at a minimum, a Bachelor's degree in Commerce and Post Graduate Diploma in Business Administration. The aforementioned background is required in order to research, analyze, communicate and recommend solutions in an efficient manner.

Collectively considering the evidence of record, the Petitioner has not provided evidence to substantiate a legitimate business need for its requirements of the attainment of education gained through a combination of foreign education programs to perform the services of the proffered position within the United States.⁴ The Petitioner must resolve these ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It is crucial that the record 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 v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). 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.* The Petitioner has not met its burden in this regard. It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

The documentation provided is also not probative towards establishing that the Petitioner's foreign education requirements for the position are equivalent to a bachelor's degree obtained in the United States. *Id.* Nonetheless, even if for the purposes of our discussion we conclude, (as the Petitioner does on appeal), that its education requirements *do* constitute the equivalent of a United States bachelor's degree in business administration (which we do not) – such a requirement alone indicates that the proffered position is not in fact a specialty occupation. We determine the Petitioner's claim that a bachelor's degree such as business administration (or equivalent) 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 such a general-purpose bachelor's degree 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*

Beneficiary's education and experience would equate to. We also renew our concerns regarding the professor's objectivity in this matter, as he is employed as an officer of the petitioning entity. *Id.*

Additionally, 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].").

⁴ The Petitioner has also not provided documentary evidence to substantiate its claim that the attainment of a foreign "Bachelor's degree in Commerce and Post Graduate Diploma in Business Administration," is recognized as a "general industry standard" for the proffered position within its industry.

Siam Corp. v. Chertoff, 484 F.3d 139, 147 (1st Cir. 2007). Specifically, the judge explained in *Royal Siam*, 484 F.3d at 147, that:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

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).

We acknowledge that in satisfying the specialty occupation requirements both the Act and the regulations require a bachelor's degree in a specific specialty, or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. However, in promulgating the H-1B regulations, the former INS made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 56 Fed. Reg. 61,111, 61,112 (Dec. 2, 1991) (to be codified at 8 C.F.R. pt. 214). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty, or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.* The requirement of a general bachelor's degree such as business administration for the proffered position, does not constitute a bachelor's in a specific specialty or its equivalent.⁵

For all of these reasons, the Petitioner has not demonstrated that the proffered position requires anything more than a general bachelor's degree (or less). As explained above, the statutory and regulatory definition of a specialty occupation requires a bachelor's degree in a specific specialty that is directly related to the proposed position. As a result, it is unnecessary to address the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).⁶ However, even if the Petitioner were to demonstrate

⁵ Section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii).

⁶ The regulations provide that the offered position must also 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;

that it satisfied one of the listed criteria, this would not result in this petition's approval, as it still has not shown that the proffered position satisfies the statutory or regulatory definition of a "specialty occupation." *See* section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). The statutory definition constitutes the primary requirement for a position to qualify as a specialty occupation. Only after this antecedent requirement has been met, may a petitioner move to demonstrate how it may satisfy one of the supplementary criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

III. CONCLUSION

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. In this matter, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

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- (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.