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U.S. Citizenship  
and Immigration  
Services

DATE: **JUL 03 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

## I. BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a 285-employee IT development business established in 2007. In order to employ the beneficiary in what it designates as a full-time Consultant at a salary of \$78,000 per year, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Software Developers, Applications" occupational classification, SOC (O\*NET/OES) Code 15-1132, and a Level I (entry-level) prevailing wage rate.

The director denied the petition, concluding that the evidence of record fails to establish that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Based upon a complete review of the record of proceeding, we find that the evidence of record does not establish that the position as described constitutes a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

## II. THE PROFFERED POSITION AND ITS CONSTITUENT DUTIES

In a letter dated March 26, 2013, the petitioner stated it provides high end [REDACTED] implementation, support, and hosting solutions, including offshore support to complement its onsite team.

In this same letter, the petitioner described the proffered position's Consultant duties as follows:

- Utilize [REDACTED] experience in Human Resources Module in implementations, support and upgrade project in the areas of Payroll, Personnel Administration, Benefits, Time Management, ESS, MSS, E-recruitment.
- Involve in all aspects of project execution in full cycle implementation of [REDACTED] R/3 HR (OM, PA, PY, TM, BEN, EREC, ESS, MSS) Modules starting from project preparation to go live and then support
- Work on [REDACTED]-ABAP-HR, ABAP, Web DynPro ABAP, Adobe Forms, MSS-PCRs, HCM, Workflow, and Enhancement tools like BADI, Enhancement Spots & USER Exits
- Utilize the analytical skills and implement functionalities

- Involve in in International Rollouts as well as Global HR Transformation Projects
- Involve in [REDACTED] HR system Configuration, legacy data conversions, documentation and end-user training.
- Responsible in Analysis, Coding and Testing of the existing as well as new developments.
- Work on Change Requests raised by the Client.
- Coordinate with the client managing the development requests from the business owners.
- Document the work performed and get the sign off from the client to proceed with the developments.
- Develop inbound/outbound E-REC interfaces for DICE and CB.
- Enhancement/validation in CATS process for different attendance and wage type.
- Develop custom OM Infotype to store job information used in CATS.
- Data migration from legacy system to [REDACTED] using SMART converts Tool.<sup>1</sup>

The petitioner also stated the following with respect to the requirements of the proffered position:

In order to competently perform these duties, the *Consultant* must have a Bachelor's degree or higher or a related field. All employees working at the level of *Consultant* in our company have a Bachelor's degree.

The petitioner has not claimed that the proffered position requires a minimum of a bachelor's degree in a specific specialty, or its equivalent.

The record contains evidence submitted by the petitioner to document the proffered position, its constituent duties, and work for the requested period of employment. The petitioner submitted an internal work order with the initial filing materials, wherein the petitioner stated that the beneficiary would work remotely from the petitioner's corporate headquarters for its various clients on [REDACTED] implementation projects. In addition, the initial filing included a statement regarding the petitioner's right to control the beneficiary that affirmatively asserted that the beneficiary would not be assigned to work off-site for all or part of the period for which H-1B classification was sought. Additional documentation in the record is a critical industry review analyzing the strength of its [REDACTED] services relative to its market competitors, together with documentation of past work between the petitioner and multiple clients, including agreements, invoices, and a statement of work.

### III. SPECIALTY OCCUPATION

To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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<sup>1</sup> The petitioner's statement of duties is presented here without correction.



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) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this

section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered 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"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner's claim that a bachelor's degree is a sufficient minimum requirement for entry into the proffered position 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. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while 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 finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.



Accordingly, the petitioner's assertion that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that that degree be in any specific specialty, is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Furthermore, upon review of its submission we have determined that the petitioner has limited its descriptions of the position and its constituent duties to general functions that do not in themselves reveal the substantive nature of the actual work that would be involved; failed to submit cogent information about any applications of a body of highly specialized knowledge in any specialty that would be required to perform such work; or described a necessary correlation between such work and the necessity for the beneficiary to hold at least a bachelor's degree, in a specific specialty or the equivalent, closely related to the nature of the proffered position as it would actually be performed.<sup>2</sup>

The proffered position has been described in terms of generalized and generic functions that fail to convey sufficient substantive information to establish the relative complexity, uniqueness and/or specialization of the proffered position or its duties. The overall responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's business operations. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's claim that the beneficiary would be "[i]nvolved" in international rollouts and global transformation projects, [REDACTED] HR system configuration, legacy data conversions, documentation, end-user training, and "all aspects of project execution in full cycle implementation of [REDACTED] R/3 HR (OM, PA, PY, TM, BEN, EREC, ESS, MSS) Modules starting from project preparation to go live and then support." However, the petitioner fails to sufficiently define how this translates to specific duties and responsibilities as the term "involved" does not delineate the actual work the beneficiary will perform. The petitioner does not explain the beneficiary's specific role ("involved") and how such work will be conducted and/or applied within the scope of the petitioner's business operations and the proffered position. The petitioner also claims that the beneficiary would "[u]tilize the analytical skills and implement functionalities." The term "utilize" is similarly unclear. Notably, the petitioner fails to demonstrate how the performance of this duty, as described in the record, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

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<sup>2</sup> We note that the petitioner declined the opportunity, explicitly provided in the RFE, to specifically and substantially expand upon the nature of the beneficiary's duties, and upon the position that they constitute. Rather than establish definitive, non-speculative employment for the beneficiary for the entire period requested, the petitioner simply listed work-related responsibilities in the undated, internal work order.

The RFE placed the petitioner on notice that additional information was required, and the petitioner was given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Further, we note that the record of proceeding lacks substantive evidence of any projects and work assignments during the period of the beneficiary's proposed employment, and this precludes us from examining the nature of the beneficiary's duties and thus finding that the duties will be those of a specialty occupation. Although the petitioner submitted agreements, invoices, and statements of work between itself and several clients, the petitioner explicitly states on appeal that it cannot provide a detailed summary of the technical duties to be performed by the beneficiary because he is not yet in the United States, and because the end clients cannot articulate the duties of a consultant.<sup>3</sup> Likewise, as a corollary, we also find that the petitioner does not distinguish the proposed duties, or the proffered position that they comprise, as more unique, specialized, and/or complex than software developer positions which may share those same generalized functions and yet not require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, which requirement is essential for a specialty occupation as defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

To the extent that they are described by the petitioner, the AAO finds, the proposed duties do not provide a sufficient factual basis to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the demands of the proffered position.

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<sup>3</sup> As correctly noted by the director, the evidence submitted by the petitioner, in the aggregate, contained expired terms, named individuals other than the beneficiary, and did not name the beneficiary. Notably, none of the documentary evidence corroborates the nature of the beneficiary's proposed work or describes the specific baccalaureate-level software development tools, knowledge, or modalities that are necessarily applied in accomplishing the stated job duties. In other words, the petitioner did not provide an adequate factual foundation for its degree-requirement claim. Therefore, the record of proceeding lacks sufficient documentary evidence corroborating what the beneficiary would do, where the beneficiary would work, and the availability of work for the beneficiary for the entire requested period.

The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.



The petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the actual work that the beneficiary would perform to establish eligibility for the benefit sought. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the complexity, uniqueness and/or specialization of the tasks, and/or (2) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The petitioner's assertions with regard to the position's educational requirement are conclusory and unpersuasive, as they are not supported by the job description or substantive evidence.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding 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 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.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied on this basis.

#### IV. BENEFICIARY QUALIFICATIONS

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit an evaluation of his foreign degree or sufficient evidence to establish that his degree is the equivalent of a U.S. bachelor's degree in a specific specialty. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in a specific specialty or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.



## V. CONCLUSION AND ORDER

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as 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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition is denied.