



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

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

MATTER OF [REDACTED]

DATE: APR. 5, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a Business Process Management (BPM) software provider, seeks to temporarily employ the Beneficiary as a “technical support engineer” 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 Petitioner did not establish that the position is a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred in her findings.

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 have consistently interpreted 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. PROFFERED POSITON

In its letter in support of the petition, the Petitioner stated that the Beneficiary will “support on premise and cloud customers” and that his specific responsibilities will include:

- Providing production support of [the Petitioner’s] Cloud,
- Performing root cause analysis and follow-through on resolving the root cause,
- Developing and enhancing our customer facing systems,
- Delivering formal and informal training to our customers,
- Drafting documentation and best practices, and
- Providing technical support (phone, email, case management) to [the Petitioner’s] customers in a timely manner.

The Petitioner stated that this position “requires the skills of an individual with a minimum of a bachelor’s degree in Computer Science, Information Technology or related.”

III. ANALYSIS

For the reasons set out below, we determine that the Petitioner has not demonstrated that it would employ the Beneficiary in a specialty occupation. Specifically, the record (1) does not describe the

position's duties with sufficient consistent detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Support Specialist," corresponding to the Standard Occupational Classification code 15-1150.

Preliminarily, we find that the Petitioner's broad description of duties is insufficient to demonstrate what the Beneficiary will actually do in the proposed position so that we may analyze and ascertain the educational requirements required to perform those duties. For example, the Petitioner does not explain what sort of technical or production support the Beneficiary will provide to its customers. Similarly, the Petitioner does not identify the duties involved in developing and enhancing customer facing systems. The Petitioner does not detail what is involved in analyzing the root cause of problems and what duties the Beneficiary will be required to perform to resolve the root cause. Although the Petitioner indicates that the Beneficiary will deliver training to its customers and will draft documentation and best practices, the Petitioner does not expand upon the Beneficiary's involvement and the daily tasks that will engage him in this process. Additionally, the Petitioner does not allocate the Beneficiary's time to these generally described duties making it more difficult to ascertain the Beneficiary's primary purpose in the organization.

The Petitioner's overview of the position does not convey an understanding of the Beneficiary's actual duties for the Petitioner. It is not possible to ascertain what specific duties will actually engage the Beneficiary on a day-to-day basis in his interaction with customers in his computer support specialist role. The Petitioner's generic description of the proffered position 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 entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

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 for classification as a specialty occupation and the appeal must be dismissed on this basis alone. We will nevertheless

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

perform a complete specialty occupation analysis under each of the four alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).²

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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 recognize the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

The subchapter of the *Handbook* entitled "How to Become a Computer Support Specialist" states, in relevant part:

Because of the wide range of skills used in different computer support jobs, there are many paths into the occupation. A bachelor's degree is required for some computer support specialist positions, but an associate's degree or postsecondary classes may be enough for others.

Education

Education requirements for computer support specialists vary. Computer user support specialist jobs require some computer knowledge, but not necessarily a postsecondary degree. Applicants who have taken some computer-related classes are often qualified. For computer network support specialists, many employers accept applicants with an associate's degree, although some prefer applicants to have a bachelor's degree.

Large software companies that provide support to business users who buy their products or services often require a bachelor's degree. Positions that are more technical are likely to require a degree in a field such as computer science, engineering, or information science, but for others, the applicant's field of study is less important.

² Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

³ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category is reviewed 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. To satisfy the first criterion, however, 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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Computer Support Specialists, <https://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-4> (last visited Mar. 31, 2017).

The *Handbook* identifies multiple paths to qualify to perform the duties of this occupation including an associate's degree or some undefined postsecondary classes, but not necessarily a postsecondary degree. The Petitioner asserts that it is a large software company and that it "provides [BPM] support to its clients who subscribe to its BPM software," thus it falls within the kind of company referenced in the *Handbook* that often requires a bachelor degree. However, the requirement of a general bachelor's degree as the minimum for entry into the occupation is inadequate to establish that this occupation qualifies as a specialty occupation. We recognize that the *Handbook* adds that "[p]ositions that are more technical are likely to require a degree in a field such as computer science, engineering, or information science." We also note, however, that the *Handbook* goes on to limit this statement by indicating that "but for others, the applicant's field of study is less important."

Thus, the *Handbook* does not provide sufficient support for a finding that the occupation of a computer support specialist is a specialty occupation, but rather strongly suggests the contrary. As noted above, we regularly review the *Handbook* on the duties and educational requirements of the occupations it addresses but it is the responsibility of 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. The Petitioner has not done so here. Other than the general description provided and its conclusory assertion regarding the academic requirements, the Petitioner does not explain or offer any analysis on why its particular position requires a bachelor's degree in a specific specialty. The Petitioner also does not cite other authoritative sources that contradict the *Handbook's* report that there are varying paths for entry into this occupation, including possessing less than a bachelor's degree in a specific specialty.

The Petitioner's description of duties does not indicate that this particular position proffered by the Petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. 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 concentrates 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.

When determining whether there is such a common degree requirement, factors we often consider include: 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 attest 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)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative sources) reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement.

In support of its assertion that the degree requirement is common to the Petitioner’s industry in parallel positions among similar organizations, the Petitioner submitted copies of job advertisements posted on the Internet by companies such as [REDACTED] and [REDACTED]. It appears that one of the advertisers, [REDACTED] is a data analytics company that supports data collection, aggregation, and processing in order to deliver data to clients. This company is not similar to the Petitioner in that it is not described as providing customer service software support to customers. Although the other three companies appear to have divisions that are involved in providing customer service to support their software, the Petitioner has not submitted evidence to establish that they are similar to it in terms of size and scope. Additionally, the duties of the advertised positions are broadly stated and there is no actual basis that establishes the advertised positions incorporate the same or similar duties of the proffered position. Thus, the record does not establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations all within the same industry.

Further, the requirements to perform the duties of the advertised positions vary. For example, [REDACTED] requires only a bachelor’s degree for the position of support engineer or senior support engineer. Although [REDACTED] expresses a preference that the bachelor degree be in a technical field and provides examples of different disciplines such as engineering, physics, mathematics, or computer science, a preference is not a requirement. [REDACTED] requirement also differs from the other three companies which indicate that a master’s degree in computer science [REDACTED] or a bachelor’s degree in computer science ([REDACTED] and [REDACTED] will qualify the successful candidate for their advertised positions. Based on the differences in only four advertisements, it is not possible to conclude what statistically valid inferences, if any, can be drawn

from the job postings with regard to the common educational requirements for entry into parallel positions in similar organizations. *See generally Earl Babbie, The Practice of Social Research* 186-228 (7th ed. 1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-96 (explaining that “[r]andom selection is the key to [the] process [of probability sampling]” and that “random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error”).

The job advertisements submitted for the first time on appeal do not establish that similar organizations to the Petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions in the Petitioner’s industry. 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.

The Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. Instead, the Petitioner provided a general overview of the proposed position that is subject to different interpretations regarding the level of analytical involvement by the Beneficiary and other salient aspects of the position. More specifically, the Petitioner does not demonstrate how the duties require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor’s or higher degree in a specific specialty, or its equivalent, is required to perform them. The descriptions do not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them.

The Petitioner references the Beneficiary’s coursework and his ability to perform the core job duties; however, the test to establish a position as a specialty occupation is not the Beneficiary’s skills or particular coursework, but whether the position itself qualifies as a specialty occupation. The Petitioner does not explain or clarify at any time in the record which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The Petitioner has not established the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record is insufficient to establish the proffered position as satisfying either prong of the criterion at 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.

Here, the Petitioner submits a list of 11 employees. The list identifies the employee by name and education level and indicates that they are employed in the position of technical support engineer. Although the title for these employees is the same title as the proffered position, the Petitioner does not indicate whether the employees all perform the same or similar duties as the duties it generally described in this matter. Additionally, the record does not include documentary evidence corroborating the Petitioner's employment of these individuals. Further, we note that the Petitioner states on appeal that it now employs 640 employees. The Petitioner does not specify how many of these 640 individuals hold the position of a technical support engineer. Thus, it is not possible to discern if the list of 11 employees is representative of all the employees the Petitioner hired to work in the proffered position or is simply a sample of the Petitioner's technical support personnel.

The Petitioner also notes that U.S. Citizenship and Immigration Services (USCIS) approved another petition filed on behalf of another individual at the same time as this petition and that it included the same information and LCA. However, if the other nonimmigrant petition was approved based on the same unsupported claims and assertions that are contained in the current record, that approval would constitute material and gross error on the part of the Director. We are not required to approve petitions where eligibility has not been demonstrated, merely because of approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be "absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent." *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

The record does not include sufficient evidence that the Petitioner has satisfied the third criterion.

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.

The proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than other technical positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We recognize that the Petitioner desires an individual with experience in customer service as it relates to supporting its software product; however, the Petitioner does not offer any detail regarding the generically described duties and analysis describing how or why the duties are so specialized and complex that they require a bachelor's degree in a specific specialty to perform them. The Petitioner has not established that this position requires a bachelor's or higher degree in a specific specialty, or its equivalent and has not

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demonstrated in the record 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 because the Petitioner has not established the proffered position qualifies as a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of A- Corp.*, ID# 315980 (AAO Apr. 5, 2017)