



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

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

MATTER OF C-I-US, LLC

DATE: APR. 6, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a financial research and analytics company, seeks to temporarily employ the Beneficiary as a "senior quantitative 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 Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not establish that it had specialty occupation work available for the Beneficiary when the petition was filed.

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. AVAILABILITY OF SPECIALTY OCCUPATION WORK**

On the H-1B petition, the Petitioner indicated that the Beneficiary would work offsite. In its letter of support, the Petitioner indicated that the Beneficiary's offsite work location would be at [REDACTED] in [REDACTED] New York, and that the Beneficiary would work at this location for the duration of the intended employment period October 1, 2016, to August 31, 2019. The record also included a framework agreement entered into between [REDACTED] a company registered in [REDACTED] and the Petitioner's affiliated company. The effective date of the agreement is March 15, 2008, and its term is three years unless terminated in accordance with the terms of the agreement. In response to the Director's request for evidence (RFE) on the continuing validity of this agreement, the Petitioner notified the Director that the Beneficiary would be assigned to work for a different client. Based on this evidence, the Director concluded that a work assignment never existed for the Beneficiary at the [REDACTED] location, and without definitive work for the Beneficiary the petition could not be approved.

On appeal, the Petitioner submits a work order between [REDACTED] and the Petitioner's affiliated company with an effective date of September 19, 2016.<sup>1</sup> The work order is for the services of a senior modeler and two modelers for the [REDACTED] in the client's offices, ending January 31, 2017. The Petitioner submits a second work order, also between its affiliated company and [REDACTED] with an effective date of October 10, 2016, for a "senior quant analyst," among other positions. The work to be performed is on the client's [REDACTED] with an anticipated completion date of May 29, 2017. Also included for the record is a series of emails between the Petitioner's different components discussing the replacement of an individual with the Beneficiary and the approval of the Beneficiary to work for a client [REDACTED]. The Petitioner asserts that these documents clearly establish that it had a *bona fide* need for the Beneficiary's services for the [REDACTED] project when the petition was filed. We disagree.

The first work order does not appear to be for the same position proffered in this petition. While the first work order would have been effective for the Beneficiary's intended period of employment, it does not identify the position as a senior quantitative analyst position. As the work order does not describe the duties for the senior modeler or modelers, we are unable to analyze the duties to ascertain if they correspond to the duties of a senior quantitative analyst, the requested H-1B position. The second work order does not commence until a date subsequent to the start date of the Beneficiary's intended employment period. Thus, the work was not available for the Beneficiary at the start date of his intended employment.

Additionally, the emails between the Petitioner's different components do not establish that the Beneficiary's proposed employment will be for the [REDACTED] project referenced in the second work order. Also, the first work order is signed September 15 and 16, 2016. The second work order is signed September 30, 2016, and October 4, 2016. Thus, neither work order was effective when the petition was filed in April 2016. Accordingly, the record lacks sufficient evidence to establish that the Petitioner had employment available for the Beneficiary when the petition was filed for the intended employment period.<sup>3</sup>

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<sup>1</sup> The work order identifying the client as "[REDACTED]" references the 2008 framework agreement between "[REDACTED]" and the Petitioner's affiliated company. The work order also references an addendum effective September 9, 2010. The addendum is not provided for the record. Although the work order identifies the Petitioner as the supplier, the Petitioner has not established the relationship between [REDACTED] and [REDACTED]. Thus, the relevance of the work order to this proceeding also has not been established.

<sup>2</sup> The record does not include sufficient information to connect "[REDACTED]" to [REDACTED], the entity identified on the work orders, or to [REDACTED] the entity identified in the 2008 framework agreement.

<sup>3</sup> The Petitioner submits a "Term Schedule" on appeal for work the Beneficiary will perform for a different client, [REDACTED] at the [REDACTED] facility. The term schedule is made on April 16, 2016, and is signed by the parties on May 4, 2016. Accordingly, this work also was not available when the petition was filed.

As the Petitioner did not demonstrate eligibility for this petition, we need not fully address other issues evident in the record. However, upon our *de novo* review of the record, we find additional issues that also require denial of the petition.

## II. SPECIALTY OCCUPATION

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 detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation. The petition must be denied on this additional basis.

### A. 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).

As recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. *See id.* The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

#### B. The Proffered Position

In a letter submitted in support of the petition, the Petitioner stated the Beneficiary will perform the following duties (paraphrased):

- Help our clients with various aspects of the Basel implementation including managing the project plan for Risk Analytics models development and evaluating/testing monthly RWA results for the implementation accuracy.
- Work on Basel II/III’s related projects (PD/LGD/EAD Models).
- Understand modelling and validation methodologies.
- Develop and execute test plans to ensure their compliance with regulatory guidelines.
- Analyze model weaknesses, benchmarking to external vendor models, and documenting and reporting the results.
- Consult with the Model Development and Risk Management teams to determine the need for developing new or updating existing analytical tools.

The Petitioner states that it “requires, as a prerequisite to employment as a Senior Quantitative Analyst, possession of, at minimum, a Baccalaureate Degree or its equivalent in a quantitative discipline such as Mathematics, Statistics, Economics, Financial Engineering, Finance or Physics, and a good understanding of Financial Markets and the Banking industry.”

In response to the Director’s RFE, the Petitioner submitted a letter signed by a representative of [REDACTED] the claimed new end client in this matter, which stated that the Beneficiary had been assigned to its facility “in the capacity of Research Analyst, with responsibility for developing model monitoring framework for efficiency of credit risk models for PD, LGD and EAD of Bank’s Wholesale portfolio.” The end client repeated the Petitioner’s academic requirements omitting the field of physics.

C. Analysis

The Petitioner claims that the proffered position requires a bachelor's degree in a "quantitative discipline such as Mathematics, Statistics, Economics, Financial Engineering, Finance or Physics, and a good understanding of Financial Markets and the Banking industry." The issue here is that "quantitative discipline" is a broad category that covers numerous and various specialties. It is not readily apparent that a degree in finance and a degree in physics, or a degree in economics and a degree in statistics, require an established curriculum of courses leading to the same required body of highly specialized knowledge. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as finance and physics, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

Thus, the Petitioner's acceptance of a variety of degrees to perform the duties of the proffered position indicates that the proffered position is not a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

Also, the Petitioner's description of the proposed duties is broad and indicates generally that the Beneficiary will help manage the project plan for models development, in conjunction with the international framework for banks in order to strengthen the regulation, supervision, and risk management of the banking sector. The duties include testing to ensure compliance with regulatory guidelines and to analyze model weaknesses. The Petitioner does not allocate the amount of time the Beneficiary will spend on any of the described duties, which limits our ability to ascertain the primary responsibilities of the position and what the Petitioner expects the Beneficiary to do in the position. The record does not include sufficiently detailed descriptions of the Beneficiary's proposed duties to establish the relative complexity, uniqueness, or specialization of the proffered position. Moreover, the work will be performed for entities other than the Petitioner, thus, evidence of the client companies' job requirements is critical. Here, the claimed end client, [REDACTED] limits the Beneficiary's duties to "developing model monitoring framework for efficiency of credit risk models" for the bank's portfolio. We are unable to discern the nature of the actual position from this description and whether the general tasks described entail the need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty.

The broad descriptions of the proffered position, preclude a finding that the 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 petition must also be denied on this basis.

### III. EMPLOYER-EMPLOYEE RELATIONSHIP

The Petitioner also has not established that it qualifies as an H-1B employer. The United States Supreme Court determined that where federal law fails to clearly define the term “employee,” courts should conclude that the term was “intended to describe the conventional master-servant relationship as understood by common-law agency doctrine.” *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322-23 (1992) (quoting *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989)). The Supreme Court stated:

“In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party’s right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party’s discretion over when and how long to work; the method of payment; the hired party’s role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.”

*Id.*; see also *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440, 445 (2003) (quoting *Darden*, 503 U.S. at 323). As the common-law test contains “no shorthand formula or magic phrase that can be applied to find the answer, . . . all of the incidents of the relationship must be assessed and weighed with no one factor being decisive.” *Darden*, 503 U.S. at 324 (quoting *NLRB v. United Ins. Co. of Am.*, 390 U.S. 254, 258 (1968)).

The record includes confusing information regarding the Petitioner’s relationship with [REDACTED] the new claimed end client. In response to the Director’s RFE, the Petitioner submitted a master services agreement between its affiliated company and [REDACTED] dated September 2013.

And as referred to above, [REDACTED] issued a letter indicating that the Petitioner had assigned the Beneficiary to its [REDACTED] office. On appeal, the Petitioner submits a "Term Schedule" between itself and [REDACTED] pursuant to a subcontractor service agreement entered into on November 1, 2013. The term schedule refers to the client as [REDACTED] and identifies the Beneficiary by name. However, there is no supporting documentation establishing that [REDACTED] is a mid-vendor between the Petitioner and [REDACTED] or identifying [REDACTED] contractual restrictions, if any, placed on the Petitioner in its right to control the Beneficiary's work. Without full disclosure of all of the relevant factors, we are unable to find that the requisite employer-employee relationship will exist between the Petitioner and the Beneficiary.

Based on the tests outlined above, the Petitioner has not established that it will be a "United States Employer" having an "employer-employee relationship" with the Beneficiary as an H-1 B temporary "employee." 8 C.F.R. § 214.2(h)(4)(ii). Accordingly, the petition must be denied for this additional reason.

#### IV. CONCLUSION

The appeal must be dismissed because the Petitioner did not submit sufficient evidence demonstrating it had specialty occupation work available for the Beneficiary when the petition was filed. Additionally, the petition must be denied because the Petitioner did not establish that the proffered position is a specialty occupation and that it will have an employer-employee relationship with the Beneficiary.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-I-US, LLC*, ID# 264195 (AAO Apr. 6, 2017)