



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

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

MATTER OF A-P-S-, LLC

DATE: APR. 19, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a supply chain management company, seeks to temporarily employ the Beneficiary as a "vice president, logistics manager" 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 proffered position qualifies as 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 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 POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “vice president, logistics manager.” In response to the Director’s request for evidence (RFE), the Petitioner provided an expanded job description of the proffered position, along with the approximate percentage of time the Beneficiary will spend on each duty, as follows (paraphrased for brevity¹):

- **Negotiate and manage contracts with customers and suppliers (10%):**

The VP plays the role of the mediator between customers and suppliers. In most of the cases, in the field of [REDACTED] where [the Petitioner] is working, customers and suppliers cannot sign an agreement and furthermore cannot execute the contract, due to the differing terms and conditions set by each. As such, a mediator is needed in order to connect the customer and supplier, negotiating with both parties so that the contract can be signed and subsequently effectively executed. The cost for both the customer and supplier is less through the use of a distributor such as ourselves, serving as intermediate layer, in comparison to spending endless time and effort, negotiating directly between themselves, with no guarantees of success.

- **Manage critical budget issues for each contract (10%):**

The VP needs to manage the budgetary issues for all contracts. He has to setup processes, using specific mechanisms, rules, and strategies, through which the company can efficiently

¹ Although the Petitioner’s job description has been paraphrased here, we thoroughly reviewed all of the duties in each of the job descriptions provided by the Petitioner.

execute low budget contracts, as well as effectively manage the execution of high budget contracts. Since a high budget contract financially exposes the company over a long period of time, the VP has to securely, and expeditiously divert funds, without further exposing the company to financial debt, in order to balance the financial exposure and allocation of capital, of the company.

- **Implement policies, internal controls, accounting standards, and procedures (5%):**

The Vice President, Logistics Manager, is responsible for setting the strategy and direction of the company, modeling and influencing the organizational structure. He is the one who implements policies, internal controls, accounting standards, and procedures. [The Petitioner], as a [REDACTED] distribution company dealing with restricted and sensitive parts and material, is not allowed to conduct business with the [REDACTED] and [REDACTED] program (its two major customers) without complying with international and federal regulations and standards through the implementation of a Quality Management System (QMS).

- **Establish systems to coordinate and control the order cycle (20%):**

One of the most critical responsibilities of the Vice President, Logistics Manager, is to establish, coordinate and control the order cycle. Every customer provides their requisitions in a different way: word documents, spreadsheets, emails, traditional mail, pdf files, web portals (on-line systems), database records, etc. All this data needs to be transformed and reformatted in a way so that it can be imported into [the Petitioner's] database. After it is imported, data mining must occur, to determine all possible suppliers that can satisfy each requisition (request). Next, based on a number of parameters, the filtering process evaluates the feasibility of each requisition as determined by the company's needs, abilities, and regulations. All requests that fail one of the selection parameters are disqualified and all remaining requests remain for the next step. The next step involves sending requests to our suppliers, forwarding our customer's specific requirements, and finally, submitting our offers to our customers, based on the supplier's quote and our expenses. This last process of the order cycle is very demanding and needs to be very well coordinated, since it is the basis for bidding, being awarded, and executing all contracts.

- **Design, develop and implement the IT environment to increase productivity (20%):**

The Vice President, Logistics Manager, as the leading officer of the company, needs to parameterize and customize the data management ERP system by setting new rules and functions to the ERP system, in order to increase sales, while maintaining a high level of productivity and quality. The VP should know both how companies work and exactly how the ERP system is built and functions. Comprehensive knowledge of the company's IT system (the architecture and functionality), will allow the VP to: design and develop new processes and rules, to oversee the implementation of the necessary tasks and procedures by

all employees, and finally, to evaluate the results of the new processes. In conclusion, the new rules and processes created and implemented by the VP will improve the response time and execution time of all contracts undertaken, giving the company the capacity to handle more contracts, thereby increasing its productivity and profit.

- **Update and improve the backbone and architecture of IT systems, to meet the new business model (20%):**

The Vice President, Logistics Manager, needs to be familiar with current IT and related systems, what the IT needs of the company are, what capacity the current hardware has, and what the company has to do to upgrade the IT backbone (hardware) at the lowest cost.

- **Monitor Product import or export processes to ensure compliance with regulatory or legal requirements (5%);**

The Vice President, Logistics Manager, is responsible for monitoring all imports and export processes for each order to ensure compliance with regulatory and legal requirements. As a [redacted] distribution company, most items that [the Petitioner] is dealing with are [redacted] controlled items. [redacted] control and export and import of defense-related parts and services found on the [redacted] or [redacted]

- **Develop business by gaining new contacts (10%):**

Every company's the ultimate goal is to develop and grow. In order to achieve maximum development and growth, the executive management, and in this company's case, the VP, needs to create a specific strategic plan for development. [The Petitioner's] development depends on winning new contracts, hiring more employees to be engaged with the new contracts, and finally increasing the profits, resources, and value of the company.

In the initial petition, the Petitioner stated that the position requires a bachelor's degree in logistics, computer science, or a related area plus several years of related experience. However, in response to the RFE, the Petitioner submitted a document entitled "Organizational Structure," which states the following requirements for the proffered position:

Skills & Qualifications

- Master's Degree or higher preferred
- Many years of experience in higher level management or field related to company's work
- Leadership, interpersonal skills, vision, discipline, experience

Thus, the Petitioner indicated a preference for an advanced degree and it does not require a degree in a specific specialty.

III. ANALYSIS

The record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.² More specifically, in response to the RFE, the Petitioner indicated that it prefers a master's or higher degree. Importantly, however, a preference is not a requirement. Further, the Petitioner's document does not indicate that a degree in a specific field of study directly related to the duties is necessary for the position. Therefore, based upon the Petitioner's statement, the proffered position does not qualify as a specialty occupation and the petition cannot be approved. Nevertheless, for the purpose of providing a full discussion of the proffered position, we will now address the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).³

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 recognize the U.S. 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.⁴

On the labor condition application (LCA)⁵ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the standard occupational classification code and title 11-3071, "Transportation, Storage, and Distribution Managers."

The *Handbook* is a career resource offering information on hundreds of occupations. However, there are occupational categories which are not covered in detail by the *Handbook* (instead it only includes summary data⁶), as well as occupations for which the *Handbook* does not provide any

² 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.

³ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁴ 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 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. 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.

⁵ The Petitioner is required to submit a certified LCA to us 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 experience and qualifications who are performing the same services. See *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

⁶ The occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm and home management advisors; audio-visual and multimedia collections specialists; clergy; merchandise displays and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel

information. U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited Apr. 18, 2017).

The *Handbook* provides summary data for the occupational category "Transportation, Storage, and Distribution Managers." The *Handbook* reports that this occupational category includes logistics managers.⁷ *Id.* It further states that the typical entry-level education for this occupation is a "high school diploma or equivalent." *Id.* Thus, the *Handbook* does not indicate that these positions comprise of an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent.

In support of the petition, the Petitioner references the DOL's Occupational Information Network (O*NET) summary report for "Logistics Managers" listed as SOC (ONET/OES Code) 11-3071.03. The summary report provides general information regarding the occupation; however, it does not support the Petitioner's assertion regarding the educational requirements for these positions. For example, the Specialized Vocational Preparation (SVP) rating cited within O*NET's Job Zone 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, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.⁸

Further, the summary report provides the educational requirements of "respondents," but does not account for 100% of the "respondents." The respondents' positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the "education level" for the respondents must be in a specific specialty.

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

guides; agricultural inspectors, as well as others.

⁷ In response to the RFE and on appeal, the Petitioner claims that the proffered position is a logistics manager position.

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

individual with a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates 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.

In determining whether there is such a common degree requirement, factors often considered by us 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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. We incorporate by reference the previous discussion on the matter.

In support of this criterion, the Petitioner submitted 15 copies (including two companies that posted for two different jobs) of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner’s reliance on the job announcements is misplaced. First, we note that some of the job postings do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is a five-person supply chain management and logistics company that was established in 2013, whereas the advertising organizations include:

- [REDACTED] – established in 1934 and is a [REDACTED]
- [REDACTED] – technology solutions, product and services, with a global team of 13,000;
- [REDACTED] – a global security company;
- [REDACTED] – information solutions and services, and member of the [REDACTED] with 15,000 employees; and,
- [REDACTED] that operates at nearly 551 sites on 80 counties and generated \$6 billion in 2014 revenues.

Furthermore, some of the postings provide little or no information regarding the hiring employers (e.g., [REDACTED] and, [REDACTED]). The Petitioner did not supplement the record of proceedings to establish that these advertising organizations are similar.

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

In addition, some of the postings do not indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required. The job postings suggest, at best, that although a bachelor's degree is sometimes required for these positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.⁹

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.¹⁰ That is, not every deficit of every job posting has been addressed.

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. 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.

A review of the record of proceedings finds that the Petitioner has not credibly demonstrated that the duties the Beneficiary will be responsible for or perform on a day-to-day basis constitute a position

⁹ It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (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 195-196 (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”).

¹⁰ The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers. Moreover, not all of the postings are for parallel positions.

so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Even when considering the Petitioner's general descriptions of the proffered position's duties, the evidence of record does not establish why a few related courses or industry experience alone is insufficient preparation for the proffered position.

While related courses may be beneficial, or even required, in performing certain duties of the position, the Petitioner 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 description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references his qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative 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 Petitioner states that its opinion and evidence should be considered and given deference. We note, however, 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 v. Meissner*, 201 F.3d at 387-88. Were U.S. Citizenship and Immigration Services limited solely to reviewing the Petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner 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.

The Petitioner stated that the Beneficiary was previously employed in this position and submitted a Form W-2, Corrected Wage and Tax Statement, indicating that the Beneficiary was reportedly paid \$45,000 in 2015 rather than \$140,970. No further explanation or documentation was provided. The Petitioner did not provide any information of other individuals employed in this position. We

carefully reviewed the Petitioner's statements and the evidence provided; however, the Petitioner's document "Organizational Structure" indicates a degree *preference*, not a degree requirement. Without more, the Petitioner has not provided sufficient evidence in support of this criterion. 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.

In support of the petition, the Petitioner submitted documentation regarding its business operations (including promotional materials, 2015 balance sheet, contracts, purchase orders, a document describing its organizational structure) as well as the statements from the Petitioner's president regarding the proffered position. We reviewed all of the evidence provided, however, it does not establish the position as a specialty occupation. For example, the Petitioner has described the position in terms of generalized functions that do not convey sufficient substantive information to establish the relative complexity, uniqueness and/or specialization of the proffered position or its duties. According to the Petitioner, the Beneficiary will "negotiate and manage contracts"; "manage budgetary issues for contracts"; "implement policies"; "update and improve the backbone and architecture of IT systems"; and, "develop business." While the Petitioner provided additional details about these tasks and the courses completed by the Beneficiary that will assist him in performing these duties, the Petitioner's description does not convey the substantive nature of the work that the Beneficiary would actually perform, the actual systems utilized by the Petitioner, or the particular body of highly specialized knowledge that would have to be theoretically and practically applied to perform it. The 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.

The Petitioner has not 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).

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.

ORDER: The appeal is dismissed.

Cite as *Matter of A-P-S-, LLC*, ID# 260168 (AAO Apr. 19, 2017)