



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

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

MATTER OF B-G-, INC.

DATE: APR. 24, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a marketing company, seeks to temporarily employ the Beneficiary as a "computer programmer" 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 evidence of record does 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 the decision. 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 POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as an in-house “computer programmer.” In its letter of support, the Petitioner provided the Beneficiary’s job duties in the proffered position.¹

In response to the Director’s request for evidence (RFE), the Petitioner stated that it “specializes in using technology to rebrand companies and their marketing strategies and have clients known around the world.” The Petitioner also submitted a revised job description for the position (verbatim):

- Designing, developing, implementing and maintaining web software applications
- Debugging and troubleshooting software defects
- Creating and maintaining code documentation
- Participating in the review of business requirements and functional specifications providing analysis and feedback
- Delivering software code that is built to scope and within the agreed upon specs
- Working as a team member on large accounts, understanding how a team operates and what is expected of the various roles on the project
- Rapidly producing interim deliverables (such as prototypes, proofs of concepts, etc.) in addition to the final live site or application

¹ We observe that the wording of the duties provided by the Petitioner for the proffered position in the letter of support is taken almost verbatim from the Occupational Information Network OnLine Summary Report for the occupational category “Computer Programmers.”

- Web Service development and deployment
- Server configuration and system management
- Providing day-to-day support, troubleshooting and bug fixing for our existing clients
- Reporting to project managers any risks or possible delays
- Estimate effort for assigned development task
- Evaluate and optimize system performance and resources

III. ANALYSIS

Applying the preponderance of the evidence standard, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as 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.²

As a preliminary matter, we find that the Petitioner has provided inconsistent information regarding the minimum requirements for the proffered position. In response to the RFE, the Petitioner stated that it "regularly hires individuals as Computer Programmers and similar positions with at least a Bachelor's Degree in Computer Science, Information Systems, or a related field." However, in the same letter, the Petitioner stated that it "regularly hires individuals for this and similar positions with at least a Bachelor's in Engineering or a related field." In addition, the Petitioner stated that the position of computer programmer requires a bachelor's degree in science or engineering in its job description. The Petitioner did not provide an explanation for the variances.

Moreover, the Petitioner's claim that a bachelor's degree in computer science, information systems, science, or engineering is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. In general, provided the specialties are closely related, e.g., sales and marketing, 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 degrees in disparate fields, such as science and engineering, 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.³ Section 214(i)(1)(B) of

² The Petitioner submitted documentation in support of 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 While the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret

the Act (emphasis added). The Petitioner has not made this showing. On the basis of the proffered position's educational requirement alone, we cannot find that the proffered position qualifies as a specialty occupation.

Furthermore, a crucial aspect of this matter is whether the Petitioner has sufficiently described the duties of the proffered position such that we may discern the nature of the position and whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. We find that the Petitioner has not done so.

For example, the Petitioner did not provide sufficient information with regard to the order of importance or frequency of occurrence (e.g., regularly, periodically, or at irregular intervals) with which the Beneficiary will perform the functions and tasks. Thus, the record does not specify which tasks are major functions of the proffered position.

In addition, the Petitioner described the proposed duties in terms of generic functions that did not convey sufficient substantive information to establish the relative complexity, uniqueness or specialization of the proffered position or its duties. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the Petitioner's assertion that the Beneficiary will be responsible for "[d]esigning, developing, implementing and maintaining web software applications" and "[d]ebugging and troubleshooting software defects." However, the statements did not provide sufficient insight into the Beneficiary's actual duties, nor do they include further details regarding the specific tasks that the Beneficiary will perform.

Further, the Petitioner claimed in pertinent part that the Beneficiary will be responsible for "[c]reating and maintaining code documentation" and "[d]elivering software code." Notably, the Petitioner did not demonstrate how the performance of these duties, as described in the record, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

The Petitioner also claimed the Beneficiary will be responsible for "Web Service development and deployment" and "[p]roviding day-to-day support, troubleshooting and bug fixing for our existing clients." The Petitioner's statements do not convey sufficient pertinent details as to the actual work involved in these tasks. The Petitioner did not convey how a baccalaureate level of education (or higher) in a specific specialty, or its equivalent, would be required to perform these tasks. Thus, the overall responsibilities for the proffered position contained general functions without providing sufficient information regarding the particular work and the associated educational requirements into

these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

which the duties would manifest themselves in their day-to-day performance within the Petitioner's business operations.

Such generalized information does not in itself establish a necessary correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. It is not evident that the proposed duties as initially described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they were described, the proposed duties did not provide a sufficient factual basis for conveying the substantive matters that would engage the Beneficiary in the actual performance of the proffered position for the entire three-year period requested, so as 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 duties and responsibilities of the proffered position.

Moreover, although the Petitioner provides a number of service agreements and statements of work (SOWs) between itself and various clients, the Petitioner has not specifically explained the duties and role of the proffered position in the context of any of these projects. That is, the Beneficiary's name and job title are not mentioned in these documents. We must review the actual duties the Beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, we must analyze the actual duties in conjunction with the specific project(s) to which the Beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the Beneficiary is expected to provide.

Furthermore, the SOWs indicate that the services will end prior to the end of the requested H-1B validity period. A petition must be filed for non-speculative work for the Beneficiary, for the entire period requested, that existed as of the time of the petition's filing. Our regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248.

Here, the Petitioner has not provided sufficient details regarding the nature and scope of the Beneficiary's employment or substantive evidence regarding the actual work that the Beneficiary would perform. 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 do not communicate: (1) the actual work that the Beneficiary would perform; (2) the complexity, uniqueness or specialization of the tasks; or (3) the correlation between that work and a need for a particular level of knowledge in a specific specialty.

As the Petitioner has not established the substantive nature of the work⁴ to be performed by the Beneficiary, this 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;⁵ (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.

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 B-G-, Inc.*, ID# 276458 (AAO Apr. 24, 2017)

⁴ Even if the proffered position had been established as one located within the “Computer Programmers” occupational category (the occupational category selected by the Petitioner on the labor condition application), we note that the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* specifically states that “some employers hire workers with an associate’s degree” for such positions. See U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Computer Programmers,” <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited Apr. 20, 2017). The *Handbook* therefore would not support the proposition that the position is a specialty occupation.

⁵ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). The “Prevailing Wage Determination Policy Guidance” issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.*