



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

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

MATTER OF G-S-, LLC

DATE: APR. 26, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an electronic cigarettes retailer, seeks to temporarily employ the Beneficiary as a “stores 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 had not established that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts that the Director’s decision was in error.

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 response to the Director’s request for evidence, the Petitioner provided the following duties for the proffered position:

- Interact with each store’s manager and/or employees reviewing reports and information and evaluating daily operations
- Review and place inventory orders
- Test new products and evaluate and budget for the company
- Perform various personnel matters, including checking and scheduling workers, performing and processing payroll and following up on other functions
- Research the industry and the liquid process
- Market the organization

On appeal, the Petitioner states that “[t]he primary duties of the position are to manage and operate 3 stores, to ultimately manage and supervise 9 employees, to market the organization and be responsible for the products ordered, bought and sold to the customers.”

The Petitioner indicated that the position requires “a bachelor’s degree, or its equivalent, in a field related to Business Entrepreneurship. Business Entrepreneurship is a field within the Management realm and fits our needs.”

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, the does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

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.³

On the labor condition application (LCA)⁴ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category for general and operations managers corresponding to the Standard Occupational Classification code 11-1021. The *Handbook* discusses this occupational category in a subchapter entitled "How to Become a Top Executive."⁵

The *Handbook* does not indicate that at least a bachelor's degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into the occupation. The *Handbook* states, in pertinent part, that "in industries such as retail trade or transportation, workers without a college degree may work their way up to higher levels within the company to become . . . general managers."⁶ It also reports that "[m]ost general and operations managers hired from outside an organization need lower level supervisory or management experience in a related field."⁷ According to the *Handbook*, the "educational requirements [for general and operations mangers] vary by

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

² While we may not discuss every document submitted, we have reviewed and considered each one.

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 designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews 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.

⁴ The Petitioner is required to submit a certified LCA to USCIS 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).

⁵ For more information on this occupational category, see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-4> (last visited Apr. 24, 2017).

⁶ *Id.*

⁷ *Id.*

industry, but candidates who can demonstrate strong leadership abilities and experience getting positive results will have better job opportunities.”⁸ As indicated, while the *Handbook* emphasizes the importance of strong leadership abilities and experience for this occupation, it does not state that there are any specific degree requirements for these jobs.

The provided Occupational Information Network (O*NET) Summary Report is also insufficient to establish that the proffered position qualifies as a specialty occupation. O*NET assigns this occupation a Job Zone “Four” rating, which groups it among occupations for which “most . . . require a four-year bachelor’s degree, but some do not.” O*NET does not indicate that four-year bachelor’s degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. 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 also 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. While the graph indicates that 29% of respondents reported that a bachelor’s degree is required, the majority of respondents reported that some college (no degree) or a high school diploma (or equivalent) is sufficient. Thus, the summary report provides general information regarding the occupational category, but it does not indicate that these positions require an educational background, or its equivalent, commensurate with a specialty occupation.

The Petitioner has not provided documentation from another 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 individual with a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze 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.

⁸ *Id.*

We generally consider the following sources of evidence to determine if there such a common degree requirement: 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 establish 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) (considering these "factors" to inform the commonality of a degree requirement)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a 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.

Although the Petitioner submitted letters from individuals in the Petitioner's industry, they do not establish that such firms "routinely employ and recruit only degreed individuals." The authors state that, based upon the provided job description, "such a position within this organization would require a bachelor's degree in Entrepreneurship" or a related field. They do not, however, indicate that they "routinely employ and recruit only degreed individuals" or have hired anyone into a parallel position. Further, they did not substantiate their assertion with documentary evidence. Unsupported testimonial evidence alone is not sufficient to meet this criterion. Therefore, the letters in the record are not sufficient to establish that such firms "routinely employ and recruit only degreed individuals," and 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.

Although the Petitioner generally asserts on appeal that it meets this criterion, it does not demonstrate how the described "stores manager" position requires 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. Specifically, the description of the Beneficiary's duties lacks the specificity and detail necessary to demonstrate complexity and uniqueness of the proffered position. For example, the Petitioner indicates that the Beneficiary will "review and place inventory orders" and "research the industry and the liquid process," but such statements do not explain the substantive application of knowledge involved or any particular educational attainment associated with such activities. Further, they do not provide any particular details regarding the demands, level of responsibilities, and requirements necessary to perform these duties. Moreover, 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 in the position it claims is so complex and unique.

On appeal, the Petitioner also claims that the Beneficiary is well-qualified for the position, and references his qualifications. The Petitioner includes a letter from the Beneficiary's academic advisor which states that "the job he has applied for is related to his major" without further explanation. While the Beneficiary's degree may relate to the position, this letter does not indicate that the particular position is so complex or unique that it would require an individual with a bachelor's degree in a specific specialty, or its equivalent.

Regardless, 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.

Thus, 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 did not submit any evidence of previous or current employees in the same position as the Beneficiary's proffered position. 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.

Even though the Petitioner generally claims that the proffered position's duties meet this criterion, it does not provide sufficient probative evidence to refute the *Handbook's* information that in industries such as retail trade, workers without a college degree may work their way up to higher levels within the company to become executives or general managers.

In addition, the Petitioner's assertions that the position is particularly complex and specialized are undermined by its designation on the LCA at a Level I wage (the lowest of four assignable wage-

levels).⁹ A Level I wage rate is commensurate with routine tasks that require the limited, if any, exercise of judgment, and is indicative of someone who will receive specific instructions on required tasks and expected results.

Thus, 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 any 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 G-S-, LLC*, ID# 353735 (AAO Apr. 26, 2017)

⁹ 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.*