



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

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

MATTER OF V- INC

DATE: AUG. 22, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a software consulting company, seeks to temporarily employ the Beneficiary as a “programmer 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 proffered position does not qualify as a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts the proffered position qualifies as a specialty occupation.

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

The Petitioner stated that the Beneficiary will serve as a programmer analyst. The Petitioner provided the following job description for the Beneficiary:

- Responsible for Analysis and testing of software Applications. Provide staff and users with assistance solving computer related problems, such as malfunctions and program problems. (approximately 20% of work time)
- Test, maintain, and monitor computer programs and systems, including coordinating the installation of computer programs and systems. (approximately 20% of work time)
- Use object-oriented programming languages, as well as client and server applications development processes and multimedia and Internet technology. (approximately 20% of work time)
- Expand or modify system to serve new purposes or improve work flow. Determine computer software or hardware needed to set up or alter system. (approximately 20% of work time)
- Train staff and users to work with computer systems and programs. Provide technical and analytical skills towards analysis and testing of software applications. (approximately 20% of work time)

According to the Petitioner, the position requires a bachelor’s degree in science, engineering, computers, or a related field.

III. ANALYSIS

For the reasons set out below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, the record does not establish (1) the substantive nature of the proffered position, and (2) that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

A. Minimum Requirement for Proffered Position

As a preliminary matter, the Petitioner's claim that a bachelor's degree in science, engineering, or computers 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 science³ 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.⁴ Section 214(i)(1)(B) of 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.

¹ 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.

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

³ For example, the term "science" is defined as "1a. The observation, identification, description, experimental investigation, and theoretical explanation of natural phenomena. . . . 2. Methodological activity, disciplines, or study <culinary science> 3. An activity that appears to require study and method." Webster's II New College Dictionary 1012 (2008). *U.S. News and World Report's* guide for colleges designates science programs into various subcategories, including biological sciences, chemistry, earth sciences, math, physics, statistics, as well as social science programs such as criminology, economics, English, history, political science, psychology, and sociology. See *U.S. News and World Report*, available at <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-science-schools> (last visited Aug. 16, 2017).

⁴ While the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret 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.

B. Job Description

Further, we find that the Petitioner's job description is recited virtually verbatim from the Occupational Information Network (O*NET) OnLine Summary Report's list of duties associated with a computer systems analyst. The description of the Beneficiary's duties, as provided by the Petitioner, lack the specificity and detail necessary to support the Petitioner's contention that the position is a specialty occupation. While a general description may be appropriate when defining the range of duties that are performed within an occupation, such a generic description generally cannot be relied upon by the Petitioner when discussing the duties attached to specific employment for H-1B approval. In establishing such a position as a specialty occupation, the description of the proffered position must include sufficient details to substantiate that the Petitioner has H-1B caliber work for the Beneficiary. Here, the job description from the Petitioner does not sufficiently communicate: (1) the actual work that the Beneficiary would perform; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level of knowledge in a specific specialty.

The Petitioner, thus, has not established the substantive nature of the work to be performed by the Beneficiary, which 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; (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.

Nevertheless, assuming, for the sake of argument, that the proffered duties as described in the record would in fact be the duties to be performed by the Beneficiary, we will analyze them and the evidence of record to determine whether the proffered position as described qualifies as a specialty occupation pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

C. First Criterion

We now turn 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.⁵

⁵ 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

On the labor condition application (LCA)⁶ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Computer Systems Analysts” corresponding to the Standard Occupational Classification code 15-1121 at a Level I wage.⁷

The *Handbook*’s subchapter entitled “How to Become a Computer Systems Analyst” states, in pertinent part, that a bachelor’s degree is not always a requirement and that “[s]ome firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming.”⁸ The *Handbook* also states: “Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.”⁹

According to the *Handbook*, a bachelor’s degree is a directly related discipline not required for entry into the occupation. While the *Handbook* further reports that many analysts have technical degrees, we observe that the *Handbook* does not specify the degree level for these technical degrees (e.g., associate’s degree). Further, the *Handbook* states that business and liberal arts degrees may be acceptable.¹⁰ Thus, the *Handbook* does not support the claim that the occupational category of “Computer Systems Analysts” is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent.

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.

⁶ The Petitioner is required to submit a certified LCA with the H-1B petition demonstrate that it will pay the 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).

⁷ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. 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. DOL, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. A 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.*

⁸ Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Computer Systems Analysts (2016-17 ed.).

⁹ *Id.*

¹⁰ As discussed above, we interpret the term “degree” to mean a degree *in a specific specialty* that is directly related to the proposed position. Since there must be a close correlation between the required specialized studies and the position, the acceptance of general and wide-ranging degrees (such as business and liberal arts degrees) strongly suggests that such positions are not specialty occupations. See *Royal Siam Corp.*, 484 F.3d at 147. Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988).

In the instant matter, the Petitioner has not provided 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)(1).

D. 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 contemplates 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 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)).

As discussed above, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty or its equivalent. We incorporate by reference our 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. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry attesting that such firms routinely employ and recruit only degreed individuals.

In support of this criterion, the Petitioner submitted six 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 (and three advertisements did not describe the company in any detail). For example, the Petitioner is a 55-person software consulting company that was established in 2005, whereas the advertising organizations include:

- [REDACTED] – creates products and solutions with 2,600 employees in 36 countries worldwide

- [REDACTED] – national telecommunications, media and entertainment company
- [REDACTED] – “niche player providing electronic transaction processing services to the energy industry”

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.

Furthermore, some of the postings do not appear to be for parallel positions. That is, some of the postings do not appear to have similar job duties, and appear to be more senior positions. For instance, the job postings include the following positions:

- [REDACTED] - requires 4+ years of programming experience
- [REDACTED] – requires minimum 2-4 years of experience;
- [REDACTED] – requires 5 or more years of systems analysis and programming experience, and 7 or more years of SQL experience;
- [REDACTED] – requires a master’s degree or a bachelor’s degree plus five years of experience;
- [REDACTED] - requires a master’s degree or a bachelor’s degree plus five years of experience;
- [REDACTED] – the position title is for “senior” programmer analyst and requires 5 years of experience.

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.¹¹ 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).

¹¹ 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.

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.

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner submitted a description of the proffered position and information regarding its business operations. While the Petitioner may believe that the position meets this prong of the regulations, we note, however, the record lacks evidence supporting the Petitioner's claim. For example, the Petitioner designated the proffered position as an entry-level position within the occupational category by selecting a Level I wage.¹² This designation, when read in combination with the evidence presented and the *Handbook's* account of the requirements for this occupation, suggests that the particular position is not so complex or unique that the duties can only be performed by an individual with bachelor's degree or higher in a specific specialty, or its equivalent.¹³

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 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).

E. 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.

¹² The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

¹³ The evidence of record does not establish that this position is significantly different from other positions within the occupational category such that it refutes the *Handbook's* information to the effect that some courses are advantageous to obtaining such a position, but not specifying that the degree must be in a specific specialty.

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 we limited solely to reviewing the Petitioner's claimed self-imposed requirements, 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.

In response to the request for evidence, the Petitioner stated that it has employed three systems analysts who have obtained a bachelor's degree. The Petitioner submitted the H-1B approval notices and a foreign degree certificate for these three individuals but did not submit credential evaluations. The Petitioner does not explain or document the duties and responsibilities of these positions and how their knowledge compares to the proffered position, nor does it articulate the body of highly specialized knowledge required for these positions. The record lacks evidence establishing that their work has the same or similar substantive responsibilities, duties, and performance requirements as the proffered position.

Furthermore, the Petitioner was established in 2005 and has 55 employees. Here, the Petitioner did not provide the total number of people it has employed to serve in the proffered position. Consequently, it cannot be determined how representative the Petitioner's claim regarding three individuals (over a 12 year period of time) is of the Petitioner's normal recruiting and hiring practices.

The Petitioner has not persuasively established that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. Therefore, the Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

F. 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 job description submitted by the Petitioner does not establish that the duties are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (of the lowest of four assignable wage-levels) relative to others within the occupational category.

Without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position within this occupational category would likely be classified at a higher-level, requiring a substantially higher prevailing wage.¹⁴ 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 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 V- Inc*, ID# 610996 (AAO Aug. 22, 2017)

¹⁴ For example, a Level IV (fully competent) position is designated by DOL for employees who “use advanced skills and diversified knowledge to solve unusual and complex problems” and requires a significantly higher wage. For additional information regarding wage levels as defined by DOL, see U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.