



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

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

MATTER OF A-A-S-C- INC

DATE: DEC. 26, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an educational and learning institution, seeks to temporarily employ the Beneficiary as an “education administrator” 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 denied the petition, concluding that the record did not establish that proffered position qualifies as a specialty occupation.

On appeal, the Petitioner 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 the letter of support, the Petitioner provided the following description of the proffered position’s job duties:

[The Petitioner] has offered temporary employment to [the Beneficiary] to use her specialized skills, education, and expertise as a [*sic*] “Education Administrator.” Briefly, her specific job duties and responsibilities include: monitor students’ and teachers’ progress, and provide students and teacherwith [*sic*] assistance in resolving any problems; confer with parents and staff to discuss educational activities and policies and students’ behavioral or learning problems; set educational standards and goals, and help establish policies, procedures, and programs to carry them out; plan, direct, and monitor instructional methods and content of educational, vocational, or student activity programs; prepare and maintain attendance, activity, or direct preparation and maintenance activities; determine allocations of funds for staff, supplies, materials, and equipment, and authorize purchases; determine the scope of educational program offerings, and prepare drafts of program schedules and descriptions, to estimate staffing and facility requirements; maintain school inventory; prepare balance sheets, profit and loss statements, and other reports to summarize the current and the projected institute’s financial position, using a computer; establish, modify, document, and coordinate implementation of the accounting control procedures; improve the computer system for general accounting; analyze and prepare documents, entries and/or accounts relating to accounts payable; analyze financial data, hours worked of employees, insurance, etc.; prepare payroll checks and reports; and assist with payroll.

In response to the Director’s RFE, the Petitioner provided the following job description and percentages of time spent on the duties, as follows:

Specifically, the professional “Education Administrator” must monitor students’ and teachers’ progress, and provide students and teachers and support staff with assistance in resolving any problems (10% of time); confer with parents and staff to discuss educational activities and policies and students’ behavioral or learning problems (15%); set educational standards and goals, and help establish policies, procedures, and programs to carry them out (10%); plan, direct, and monitor instructional methods and content of educational, vocational, or student activity programs (5%); prepare and maintain attendance, activity, planning, accounting, or personnel reports and records for officials and agencies, or direct preparation and maintenance activities (10%); determine allocations of funds for staff, supplies, materials, and equipment, and authorize purchases (5%); determine the scope of educational program offerings, and prepare drafts of program schedules and descriptions, to estimate staffing and facility requirements (10%); prepare; analyze and/or review balance sheets, profit and loss statements, and other reports to summarize the current and the projected company’s financial position, using a computer; establish, modify, document, and coordinate implementation of the accounting control procedures, and improve the computer system for general accounting, and analyze and review documents, entries and/or accounts relating to accounts payable (20%); analyze financial data, hours worked of employees, insurance, etc.; review and analyze payroll checks and reports, and assist with payroll (15%).

According to the Petitioner, the proffered position requires at least a bachelor’s degree in “Commerce, Business Administration, Management or . . . a related field” (or equivalent).

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. Specifically, the Petitioner (1) has not established that the proffered position requires an educational background, or its equivalent, commensurate with a specialty occupation and (2) does not describe the position’s duties with sufficient detail and consistency.¹

First, the Petitioner’s claim that a bachelor’s degree in “Commerce, Business Administration, Management or . . . a related field” (or the equivalent) is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. If the Petitioner’s degree requirement can be satisfied by a general bachelor’s degree in business administration, without further specialization, then it is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a general business administration degree, without

¹ While we may not discuss every document submitted, we have reviewed and considered each one.

further specification, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp.*, 484 F.3d at 147 (recognizing a business administration degree as a “general-purpose bachelor’s degree”); cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility.”).

On the basis of this position’s educational requirement alone, we cannot find that the proffered position qualifies as a specialty occupation.

Further, upon review of the Petitioner’s descriptions of the duties of the proffered position, we find that most of the provided job duties are virtually identical to those listed in the Occupational Information Network (O*NET) Summary Report for “Education Administrators, Preschool and Childcare Center/Program” corresponding to Standard Occupational Classification (SOC) code 11-9031.² For example, the first three job duties listed in O*NET for this occupation (“monitor students’ progress and provide students and teachers with assistance in resolving any problems,” “confer with parents and staff to discuss educational activities and policies and students’ behavioral or learning problems,” and “set educational standards and goals and help establish policies, procedures, and programs to carry them out”) are also the first three job duties listed almost verbatim by the Petitioner.³

While a generic description may be appropriate when defining the range of duties that are performed within an occupation, the Petitioner cannot generally rely on such a description when discussing the duties attached to specific employment for H-1B approval. In order to establish that the position qualifies as a specialty occupation, the description must sufficiently communicate the actual work the Beneficiary will perform for the Petitioner, including the complexity, uniqueness, or specialization of the tasks, and the correlation between that work and the need for a particular level of knowledge in a specific specialty. See *Defensor*, 201 F.3d at 387 (a “common sense reading” of the regulations indicates an intention to fully implement the definition of “specialty occupation”); see generally 8 C.F.R. § 214.2(h)(4)(i)(A)(1), (iii)(B)(2), and (iv)(A).

Not only did the Petitioner provide generic descriptions, but we also find that some of the proffered job duties appear inconsistent with a position under the “Education Administrators, Preschool and Childcare Center/Program” occupational category. That is, the Petitioner indicated that the Beneficiary will perform a variety of bookkeeping duties such as preparing records relating to accounts payable, processing data related to employee working hours and insurance, preparing

² See O*NET Summary Report for “Education Administrators, Preschool and Childcare Center/Program,” <https://www.onetonline.org/link/summary/11-9031.00> (last visited Dec. 22, 2017).

³ In fact, the Petitioner’s initial letter is identical to the letter submitted in support of the Beneficiary’s prior H-1B petition for a different employer (a copy of which is included in this filing). More specifically, the letter is copied verbatim, including grammatical and punctuation errors. The only difference is the section regarding information about the Petitioner. When letters are worded the same (and include identical errors), it indicates that the words are not necessarily those of the authors and may cast some doubt on the letters’ validity.

payroll checks and reports, and assisting with payroll.⁴ The Petitioner also indicated that she will perform some accounting duties, including establishing and coordinating implementation of the accounting control procedures, improving the computer system for general accounting, and analyzing financial data and reports.⁵ In fact, several of the proffered duties appear to have been copied directly from the Dictionary of Occupational Titles (DOT) for the “Accountant” profession.⁶ The Petitioner has not explained how these bookkeeping and accounting duties - which cumulatively account for 35% of the Beneficiary’s time - are consistent with an entry-level “Education Administrators, Preschool and Childcare Center/Program” position.

It is noted that, where a petitioner seeks to employ a beneficiary in two or more distinct occupations, the petitioner should file separate petitions, requesting concurrent, part-time employment for each distinct occupation. While it may not be the case here, if a petitioner does not file separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, U.S. Citizenship and Immigration Services (USCIS) would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position or the limiting of the approval of a petition to perform only certain duties. *See generally* 8 C.F.R. § 214.2(h). Furthermore, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation. *See generally* 8 C.F.R. § 214.2(h); 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. Thus, filing separate petitions would help ensure that a petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered.

The Petitioner did not file separate petitions, and did not otherwise explain this “education administrator” position’s performance of substantive bookkeeping and accounting duties. Thus, without additional evidence, we find the record insufficient to demonstrate the substantive nature of the work to be performed by the Beneficiary. We are therefore precluded from finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the

⁴ According to O*NET, positions under the “Bookkeeping, Accounting, and Auditing Clerks” occupation generally perform duties including “[c]ompile statistical, financial, accounting, or auditing reports and tables pertaining to such matters as cash receipts, expenditures, accounts payable and receivable, and profits and losses,” and “[p]repare and process payroll information.” O*NET Summary Report for “Bookkeeping, Accounting, and Auditing Clerks,” <https://www.onetonline.org/link/summary/43-3031.00> (last visited Dec. 22, 2017).

⁵ Accountants generally “[a]nalyze financial information and prepare financial reports to determine or maintain record of assets, liabilities, profit and loss, tax liability, or other financial activities within an organization.” O*NET Summary Report for “Accountants,” <https://www.onetonline.org/link/summary/13-2011.01> (last visited Dec. 22, 2017). We note that according to the submitted education evaluation, the Beneficiary holds the equivalent to a bachelor’s degree in accounting.

⁶ Dictionary of Occupational Titles for “Accountant,” <https://occupationalinfo.org/16/160162018.html> (Dec. 22, 2017). While the Petitioner may have copied these duties from DOT about the “Accountant” profession, we nevertheless maintain that some of the proffered job duties are bookkeeping or accounting clerk duties better classified under the “Bookkeeping, Accounting, and Auditing Clerks” occupation as described in O*NET.

substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it also cannot be found that the proffered position qualifies for classification as a specialty occupation.

IV. LABOR CONDITION APPLICATION

For the reasons discussed below, we also find that the Petitioner has not established that the petition is supported by a labor condition (LCA) which supports and corresponds with the petition.

While the Department of Labor (DOL) is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. 20 C.F.R. § 655.705(b). The Petitioner is required to submit a certified LCA 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).

Again, in this matter, the Petitioner indicated that the Beneficiary will spend 35% of her time performing a mix of bookkeeping and accounting duties. The issue here is with the Beneficiary’s performance of accounting duties. The DOL’s “Prevailing Wage Determination Policy Guidance” provides clear guidance for selecting the most relevant O*NET occupational code classification, as follows:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer’s job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer’s job offer shall be used to identify the appropriate occupational classification If the employer’s job opportunity has worker requirements described in a combination of O*NET occupations, the NPWHC should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer’s job offer is for an engineer-pilot, the NPWHC shall use the education, skill and

experience levels for the higher paying occupation when making the wage level determination.

The Petitioner classified the position on the LCA as a Level I (entry) position under the “Education Administrators, Preschool and Childcare” occupation with a prevailing wage of \$39,395 per year. The prevailing wage (in the same area and time period as the intended employment) for the occupation of “Accountants” at a Level I wage, however, is significantly higher at \$55,474 per year⁷, and exceeds the proffered wage of \$39,395 per year. In order for the LCA to be found to correspond with the petition, it would appear that the Petitioner needed to provide a certified LCA at the time of filing for the SOC code 13-2011.01 for “Accountants.” Thus, the Petitioner has not established that it submitted a certified LCA that supports and corresponds with the claimed duties of the proffered position.

V. FILING REQUIREMENTS

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. § 103.2(a)(1), in pertinent part, as follows:

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission. . . . [and] must be filed with fee(s) as required by regulation.

The Petitioner indicated on the Form I-129, H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement, that it was exempt from the American Competitiveness and Workforce Improvement Act (ACWIA) fee, as required by section 214(c)(9)(A) of the Act, because it is “a primary or secondary education institution.” Based on the submitted evidence, however, it appears that the Petitioner is a daycare facility. For example, the Petitioner identified itself with the North American Industry Classification System code of 624410, which “comprises establishments primarily engaged in providing day care of infants or children.”⁸ The Petitioner also used the SOC code and prevailing wage for “Education Administrators, Preschool and Childcare Center/Program,” rather than the SOC code 11-9032 for “Education Administrators, Elementary and Secondary School.” The Petitioner stated in its support letter that it provides “developmentally-appropriate programs for children on a full-time or part-time basis for children aged 6 weeks to school age,” and submitted letters from other self-described “daycare centers” to support this petition. Therefore, it would appear from the documentation of record, the Petitioner, a daycare facility, was not eligible for the exemption to the ACWIA fee. In other words, the petition was not properly filed because the Petitioner failed to pay the applicable ACWIA fee.⁹

⁷ See <http://www.flcdatcenter.com/OesQuickResults.aspx?area= code=13-2011&year=16&source=1> (last visited Dec. 22, 2017).

⁸ See <https://www.census.gov/econ/isp/sampler.php?naicscode=624410&naicslevel=6> (last visited Dec. 122, 2017).

⁹ Or, if the Petitioner was eligible for this fee exemption because it is a primary or secondary education institution, then it

VI. CONCLUSION

The Petitioner has not established eligibility for the requested classification.

ORDER: The appeal is dismissed.

Cite as *Matter of A-A-S-C- Inc*, ID# 810681 (AAO Dec. 26, 2017)

should have used the relevant prevailing wage for "Education Administrators, Elementary and Secondary School" of \$71,070. See [http://www.flcdatcenter.com/OesQuickResults.aspx?area=\[REDACTED\]code=11-9032&year=16&source=1](http://www.flcdatcenter.com/OesQuickResults.aspx?area=[REDACTED]code=11-9032&year=16&source=1) (last visited Dec. 22, 2017). This would constitute another reason why the LCA does not support and correspond with the position.