



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

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

MATTER OF D-C-P- LLC

DATE: FEB. 23, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an investment firm, seeks to temporarily employ the Beneficiary as an investment 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, California Service Center, denied the petition, concluding that the Petitioner had not demonstrated that the proffered position qualifies as a specialty occupation position.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the evidence is sufficient to show that the proffered position qualifies as a specialty occupation position.

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” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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 “investment analyst.” The Petitioner stated that the Beneficiary would perform the following duties:

1. Performing financial analysis and preparing investment memoranda, detailing investment rationale, execution risks, and prospective deal returns; (10%)
2. Performing extensive financial modeling, including scenario and sensitivity analysis; (10%)
3. Performing capital budgeting analysis; (10%)
4. Performing acquisitions due diligence including market analysis, environmental and physical studies, insurance, property tax research, and interacting with third-party service providers; (10%)
5. Conducting research on existing properties to determine whether or not they continue to meet stated investment objectives and recommending changes in these properties if they are no longer compatible with investment objectives; (10%)
6. Performing financial management of properties in the food and entertainment portfolio, as well as generating financial statements as needed; (10%)
7. Monitoring performance of domestic properties, as well as farm-to-table investment properties in Sub-Saharan Africa, and recommending solutions for cost saving and efficiency; (10%)
8. Sourcing and analyzing real estate investments in the United States; (5%)

9. Sourcing foreign investment opportunities in Sub-Saharan Africa; (5%)
10. Traveling to visit potential investment properties in Sub Saharan Africa and the US as needed; (5%)
11. Communicating with a reporting to all levels: from Senior Associates to CEO; (5%)
12. Ensuring accuracy of all models adopted and utilized; (2.5%)
13. Developing and maintaining research on certain geographic markets and sectors; (2.5%)
14. Participating in all aspects of investment transactions; (1%)
15. Completing closing statements and developing transition plans for completed acquisitions. (4%)

The Petitioner stated that the proffered position requires a minimum of a bachelor's degree in Finance, Accounting, Business, or a related field.

III. ANALYSIS

As a preliminary matter, the Petitioner's claim that a bachelor's degree in business is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proffered 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. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business or business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, we interpret the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business or business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam*, 484 F.3d at 147.¹

¹ Specifically, the judge explained in *Royal Siam* that:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by

Again, the Petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business. Without more, this assertion alone indicates that the proffered position is not in fact a specialty occupation. The Director's decision must therefore be affirmed and the appeal dismissed on this basis alone.

Moreover, it also cannot be found that the proffered position is a specialty occupation because the Petitioner has not satisfied any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). We will now discuss each criterion in turn.

A. First Criterion

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) 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.²

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Financial Analysts" corresponding to the Standard Occupational Classification code 13-2051.³

The *Handbook* states the following about the educational requirements of financial analyst positions:

the simple expedient of creating a generic (and essentially artificial) degree requirement.

² 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.

³ 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 she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she 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.*

Financial analysts typically must have a bachelor's degree, but a master's degree is required for advanced positions.

....

Most [financial analyst] positions require a bachelor's degree. A number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, and mathematics. For advanced positions, employers often require a master's degree in business administration (MBA) or a master's degree in finance. Knowledge of options pricing, bond valuation, and risk management are important.

The *Handbook* does not indicate that financial analyst positions normally require a minimum of a bachelor's degree in a specific specialty, or the equivalent. While the *Handbook* states that most positions require a bachelor's degree, it does not indicate that the degrees required for such positions would necessarily have to be in a specific specialty. To the contrary, the *Handbook* states that "a number of fields of study provide appropriate preparation," including accounting, economics, finance, statistics, and mathematics.

Further, as previously discussed, although a general-purpose degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Cf. Michael Hertz*, 19 I&N Dec. at 560. Therefore, the *Handbook's* recognition that a non-specialty master's degree in business administration is sufficient for entry into the occupation does not eligibility under this criterion, either.

Finally, we find that, to the extent that they are described in the record of proceedings, the duties that the Petitioner ascribes to the proffered position indicate a need for a range of knowledge of financial analysis, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

The duties and requirements of the position as described in the record of proceedings do not indicate that this particular position proffered by the Petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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.

In determining whether there is such a common degree requirement, factors often considered by U.S. Citizenship and Immigration Services 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)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide 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.

The Petitioner submitted two letters from two companies, “in the same industry as the H-1B Petitioner and of comparable size, indicating that they employ positions similar to the H-1B position and also require that these positions be filled by an individual possessing, at a minimum, a Bachelor’s Degree in Accounting, Finance, Business or related field.” As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, we will give an opinion less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.*

The first letter is from [REDACTED] the CEO of [REDACTED] which is a company that “engages in investment management services for institutional clients” and has three employees. [REDACTED] stated in her letter that the company employs a professional for a position that is similar to the Beneficiary’s position for which “we require the applicant to possess, at a minimum, a Master’s Degree or foreign degree equivalent in Accounting, Finance, Business or Economics,” and that this requirement is “common in our industry for this type of position.”

Upon review of the letter, [REDACTED] does not demonstrate or assert in-depth knowledge of the Petitioner’s specific business operations or how the duties of the position would actually be performed in the context of the Petitioner’s business enterprise. For instance, there is no evidence that she has knowledge of the Petitioner’s business operations gained through such means as visiting the Petitioner’s premises, observing the Petitioner’s employees, interviewing them about the nature of their work, or documenting the knowledge that they apply on the job. In addition, [REDACTED] does not discuss the duties of the proffered position in any substantive detail. Also, [REDACTED]

has not provided sufficient detail regarding the similarity of its company with the Petitioner. For these reasons, the letter from [REDACTED] does not adequately support the Petitioner's assertion that the proffered position qualifies as a specialty occupation.

The second letter is from [REDACTED] President of [REDACTED] that is "engaged in commercial mortgage backing including debt and equity for commercial real estate" and has 25 employees. [REDACTED] stated in his letter that the company employs a professional similar to the Petitioner's position of investment analyst and "[it] require[s] the applicant to have at a minimum, a Bachelor's degree in accounting, finance, business or related field." There is no evidence that he has any knowledge of the Petitioner's business operations gained through such means as visiting the Petitioner's premises, observing the Petitioner's employees, interviewing them about the nature of their work, or documenting the knowledge that they apply on the job. In addition, [REDACTED] does not discuss the duties of the proffered position in any substantive detail. Also, [REDACTED] has not provided sufficient detail regarding the similarity of its company with the Petitioner. For these reasons, the letter from [REDACTED] does not support the Petitioner's assertion that the proffered position qualifies as a specialty occupation.

The Petitioner also provided five job vacancy announcements placed by other companies that we reviewed. Notably, the Petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. Further, as they are only solicitations for hire, they are not evidence of what qualifications were ultimately required for the positions. Moreover, upon review of the documents, we find that they do not establish that a requirement for a bachelor's degree, in a specific specialty, is common to the Petitioner's industry in similar organizations for parallel positions to the proffered position. For example, several advertisements require a bachelor's degree but accept several different fields of study. For example, [REDACTED] requires a bachelor's degree in business finance or accounting; [REDACTED] requires a degree that can be in financial, accounting, real estate, business administration, economics, statistics, mathematics or a related field or a liberal arts degree and an MBA. The additional three advertisements from [REDACTED] require a bachelor's degree in finance, economics, or a related field. While the advertisements state a requirement of a bachelor's degree, they do not indicate that the degrees required for such positions would necessarily have to be in a specific specialty.

Furthermore, the Petitioner did not indicate how the advertising companies are similar to the Petitioner which was established in 2009 and has 22 worldwide employees. For example, [REDACTED] is a 500-employee company and [REDACTED] is a private equity firm in the luxury resort and real estate industry. In addition, [REDACTED] is a real estate investment firm that acquires and develops urban retail, residential and mixed-use properties. It does not appear that the advertising companies are similar to the Petitioner. When determining whether a petitioner and an advertising organization share the same general characteristics, 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) may be considered. It is not sufficient for a petitioner to

claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions with organizations that are in the Petitioner's industry and otherwise similar to the Petitioner. The Petitioner has not, therefore, satisfied the criterion of 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 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 description 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.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. As noted above, the Petitioner attested on the submitted LCA that the wage level for the proffered position is a Level I (entry-level) wage. Such a wage level is for a position which only requires a basic understanding of the occupation; the performance of routine tasks that require limited, if any, exercise of judgment; close supervision and work closely monitored and reviewed for accuracy; and the receipt of specific instructions on required tasks and expected results, is contrary to a position that requires the performance of complex duties.⁴ It is, instead, a position for an employee who has only basic understanding of the occupation.

⁴ The issue here is that 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, it is important to note that a Level I wage-designation does not preclude a proffered position

The Petitioner claims that the Beneficiary is well-qualified for the position, and references her 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 did not provide any evidence regarding this criterion. We cannot conclude that the Petitioner has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. We again refer to our earlier comments and findings with regard to the implication of the Petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels) wage. That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The evidence of record does not, therefore, satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an 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 consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

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.

The burden is on the Petitioner to establish eligibility for the immigration benefit sought. Section 291 of the Act. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of D-C-P- LLC*, ID# 152137 (AAO Feb. 23, 2017)