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

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

MATTER OF [REDACTED]

DATE: FEB. 23, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an accounting firm, seeks to temporarily employ the Beneficiary as "advisory staff-technical advisor programs" 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, Vermont Service Center, denied the petition. The Director concluded the Petitioner did not establish that it has an employer-employee relationship with the Beneficiary.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in denying the petition.

Upon review, the Director's decision will be withdrawn and the petition will be remanded for entry of a new decision.

**I. PROFFERED POSITION**

The Petitioner stated that it is a company with over 20,000 employees providing advisory services around the world, including actuarial and business advisory services, business risk services, financial services risk management, amongst other similar professional services. The Petitioner indicated on the labor condition application (LCA) that the Beneficiary would work in [REDACTED] New York, but noted that it was common for its employees to "attend client locations for work-related functions." The Petitioner asserted that there are no specific itineraries for these visits, but that the decision to visit client locations is "made on an ad-hoc basis." The Petitioner stated that the Beneficiary would be assigned as advisory staff in the [REDACTED] group based in New York where she would "begin to understand the comprehensive scope of Advisory practices and competencies." The Petitioner explained that the Beneficiary would be assigned to a "Power and Utilities client" performing the following duties:

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[The Beneficiary] is helping the client to develop and enhance their business application in MS Access and VBA. She is involved in the enhancement of the client's asset database essential in supporting Asset Identification (AIC) as part of demonstrating compliance with NERC CIP v5 using MS Access and VBA. This database provides a means to update data in centralized location and support change management procedures and reconciliation processes. She is also involved in documentation of the user management procedures and reporting mechanism.

According to the Petitioner, the proffered position requires at least "a bachelor's degree in Computer Science, Statistics, Engineering, Operations Research, or Accounting or [a] related field."

## II. EMPLOYER-EMPLOYEE RELATIONSHIP

As noted, the Director concluded that the Petitioner did not establish that it will be a "United States employer" having "an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee." 8 C.F.R. § 214.2(h)(4)(ii).

Based upon our review of the entire record of proceedings, including the submissions on appeal addressing the grounds for the Director's decision, we find that the Petitioner has overcome this basis of the Director's denial. Specifically, the totality of evidence now establishes that the Petitioner will have the requisite employer-employee relationship with the Beneficiary. As such, we will withdraw the Director's decision with respect to this issue.

## III. SPECIALTY OCCUPATION

However, although not addressed in the Director's decision, the record as presently constituted does not establish that the proffered position qualifies for classification as a specialty occupation. Accordingly, we will instruct the Director to review this issue on remand and request any additional evidence deemed necessary.

### A. 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” 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. Meissener*, 201 F.3d 387 (5th Cir. 2000).

## B. Analysis

Upon review of the record in its totality and for the reasons set out below, we determine that the evidence is insufficient to establish that the proffered position qualifies for classification as a specialty occupation.

On the LCA<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> 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, 545-46 (AAO 2015).

<sup>2</sup> 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

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As a preliminary matter, the Petitioner did not articulate a specific bachelor's degree required for entry into the proffered position.<sup>3</sup> As previously stated, the Petitioner claimed that the position has a minimum requirement of at least a bachelor's degree in several disparate fields including "Computer Science, Statistics, Engineering, Operations Research, Accounting, or [a] related field." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, 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 a degree in these disparate fields, such as accounting, statistics, 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. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, 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.

Again, the Petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in a number of different degrees. Here and as indicated above, the Petitioner, who bears the burden of proof in this proceeding, has not established either (1) that the various degrees are closely related fields, or (2) that they are directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, under the Petitioner's own standards.

Therefore, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires

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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://flcdatcenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatcenter.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.*

<sup>3</sup> The Petitioner submitted documentation in support of the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

anything more than a general bachelor's degree. As explained above, 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 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.

The evidence of record does not establish how these dissimilar fields of study form either a body of highly specialized knowledge or a specific specialty, or its equivalent, and the Petitioner asserts that the job duties of this particular position can be performed by an individual with a bachelor's degree in any of these unrelated fields. Without more, the Petitioner's statement alone indicates that the proffered position is not in fact a specialty occupation.

Furthermore, a review of the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) indicates that computer systems analyst positions do not require a U.S. bachelor's or higher degree in a specific specialty, or its equivalent, for entry into the occupation. In fact, the *Handbook*, similar to the Petitioner's assertions, indicates that a number of degrees might suffice for a computer systems analyst position. Specifically, the *Handbook* indicates that a bachelor's degree in a computer or information science field may be common, but not that it is a requirement for entry into these jobs. In addition, the *Handbook* reports that "many" computer systems analysts may only have liberal arts degrees and programming or technical experience, but does not further qualify the amount of experience needed. The *Handbook* also notes that many analysts have technical degrees, but does not specify a degree level (e.g., associate's degree) for these degrees. The *Handbook* further specifies that such a technical degree is not always a requirement. Thus, the *Handbook* reports that there are several paths for entry into the occupation. See U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Feb. 22, 2017).

Therefore, we find that the record as current constituted does not establish that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). We will remand this matter to the Director for a new decision, as the Director did not analyze whether the proffered position qualifies as a specialty occupation. The Director should request any additional evidence deemed warranted to address the deficiencies noted with respect to whether the position qualifies as a specialty occupation.

#### IV. CONCLUSION

Based on the foregoing discussion, although the Director's decision will be withdrawn, the evidence of record as presently constituted does not establish eligibility for the benefit sought. Accordingly, we will remand this matter to the Director for further action and entry of a new decision.

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**ORDER:** The decision of the Director, Vermont Service Center, is withdrawn. The petition is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of* [REDACTED] ID# 188246 (AAO Feb. 23, 2017)