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

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

MATTER OF K-T-O-C-, INC.

DATE: JAN. 26, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an engineering firm, seeks to temporarily employ the Beneficiary as a part-time "mechanical engineer" under the H-1B nonimmigrant classification for specialty occupations.<sup>1</sup> 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. The Director concluded that the Petitioner had not established the proffered position is a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and a brief, and asserts that the Director erred in her findings.

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.

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<sup>1</sup> In its letter of support, the Petitioner states that it is an "Autodesk® solutions provider." The Petitioner claims it is an [REDACTED] and further that it partners with engineering and manufacturing firms to simplify the process of conceptualization, design, and production.

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). U.S. Citizenship and Immigration Services (USCIS) has 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 a letter submitted in support of the petition, the Petitioner listed the Beneficiary’s major responsibilities as:

1. Provide frontline technical support to manufacturing customers and internal staff through web interface, via email and phone, and onsite when appropriate.
2. Apply engineering principles to resolve technical issues and document them for internal and customer consumption[.]
3. Research, verify, and generate defect reports and feature requests[.] Investigate, develop, and present training on Autodesk products and support issues[.]
4. Use technical skills to troubleshoot software and hardware problems[.]
5. Assist Application Engineers with technical issues to Autodesk and appropriate Application Engineers for priority resolution[.]
6. Follow [the Petitioner’s] Support procedures[.]
7. Apply technical knowledge to be proficient in Autodesk Inventor, Autodesk Product Design Suite, Vault for data management, Simulation and other products.
8. Take Autodesk Learning Central courses and pass tests[.]

9. Develop technical support materials including for customers[.]
10. Support network, licensing, and subscription requests for the product[.] Develop technical design content for custom product presentations[.]
11. Work at [the Petitioner's] HQ office in [REDACTED]

According to the Petitioner, for "any position of this caliber[,] a Bachelor of Engineering is [the] required field."

In response to the Director's request for evidence (RFE), the Petitioner submitted a job description, outlining the duties of the proffered position and allocating the time spent on the duties as follows (formatted for brevity):

- Provide technical support to manufacturing customers and internal staff through web interface, via email and phone, and on-site when appropriate – 20% of time
- Apply engineering principals to resolve technical issues and document them for internal and customer consumption – 5% of time
- Research, verify, and generate defect reports and feature requests. Investigate, develop and present training on Autodesk products and support issues – 10% of time
- Assist Application Engineers with technical issues to Autodesk and assign appropriate Applicant Engineers for priority resolution – 5% of time
- Develop technical support materials for internal use and customers – 15% of time
- Support network, licensing and subscription requests for the product, develop technical design content for custom product presentations – 10% of time
- Analyze design or requirements information for new mechanical equipment or systems – 10% of time
- Create models of engineering designs or methods, determine operational methods – 15% of time
- Implement design or process improvements – 10% of time

### 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 record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

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<sup>2</sup> 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.

On the labor condition application (LCA)<sup>3</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Mechanical Engineers,” corresponding to the Standard Occupational Classification code 17-2141.<sup>4</sup> However, upon review of the Petitioner’s descriptions of the duties for the proffered position, the descriptions are broadly stated and do not include sufficient detail to determine that the Beneficiary will be performing the duties of a mechanical engineer.

The Petitioner has not provided a consistent description of the Beneficiary’s duties. For example, the Petitioner initially indicated that the Beneficiary would “[u]se technical skills to troubleshoot software and hardware problems,” “[f]ollow [the Petitioner’s] Support procedures,” and “[t]ake Autodesk Learning Central courses and pass tests.” The Petitioner omitted these responsibilities in its response to the Director’s RFE. The Petitioner also added duties in response to the Director’s RFE, including analyzing design or requirements information for new mechanical equipment or systems, creating models of engineering designs or methods, determining operational methods and implementing design or processing improvements. The Petitioner does not explain these variances in the record. “[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

Further, even upon review of the different versions of the Beneficiary’s proposed duties in the record, the descriptions are generic and lack the detail necessary to convey the Beneficiary’s actual day-to-day tasks. Thus, we are unable to ascertain whether the proffered position requires duties which will incorporate the theoretical and practical application of a body of highly specialized knowledge, associated with the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent, as the minimum for entry into the occupation as required by section 214(i)(1) of the Act.

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<sup>3</sup> The Petitioner is required to submit a certified LCA to USCIS to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the “area of employment” or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. See *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

<sup>4</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 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.*

We have also reviewed the Petitioner's initial description of duties and the Petitioner's Internet job postings for its technical support specialist and PLM technical consultant positions provided in response to the Director's RFE. We note that eight out of eleven of the Petitioner's technical support specialists' duties directly correspond to eight of the eleven responsibilities listed in the Petitioner's initial description for the proffered position. Although the Petitioner also stated, in a letter in response to the Director's RFE, that both the technical support specialist and PLM technical consultant positions are "lesser titles than that of the Beneficiary['s]" position, the Petitioner does not offer information or evidence explaining how the proffered position is significantly different than its technical support specialist position. The Petitioner's job posting for its technical support specialist indicates that experience in a design and engineering environment is required and that a bachelor's of science degree in information systems, engineering or manufacturing is preferred. However, a preference for a specific degree is not synonymous with a requirement for a degree in a specific field.

Moreover, even if a general bachelor's degree was required, we disagree with the Petitioner's assertion on appeal that a position that requires only a general bachelor's degree and not a bachelor's degree in a specific field is sufficient to establish a position 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 degree, 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) ("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."). Thus, while a general-purpose bachelor's degree 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 Corp.*, 484 F.3d at 147.

We have also reviewed the Petitioner's assertion on appeal that its descriptions of duties for the proffered position correspond to the Department of Labor's (DOL) *Occupational Outlook Handbook's* (*Handbook*) report on the occupation of a mechanical engineer.<sup>5</sup> However, as stated above, the Petitioner's descriptions of duties do not include sufficient detail to ascertain what the Beneficiary will do on a daily basis. For example, we do not find that developing technical support materials for internal use and for customers, researching, verifying, and generating defect reports and feature requests, or investigating, developing and presenting training on Autodesk® products and support issues corresponds to the *Handbook's* duty of "Develop and test prototypes of devices they design." The Petitioner has provided no context for what prototype device the Beneficiary will

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<sup>5</sup> We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. For more information on the occupation of "Mechanical Engineers," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Mechanical Engineers," <https://www.bls.gov/ooh/architecture-and-engineering/mechanical-engineers.htm#tab-2> (last visited Jan. 18, 2017).

design. Additionally, providing technical support to manufacturing customers and internal staff through the web, via email, phone, and on-site, when appropriate, does not correlate to overseeing the manufacturing process for the device. Providing technical support within the context of the Petitioner's business suggests the Beneficiary will be helping clients operate software that has already been designed and manufactured, not overseeing the manufacturing process.<sup>6</sup>

We have also considered that the Petitioner listed more duties in its descriptions of the proposed position than the duties listed in the *Handbook* for the occupation of mechanical engineer. However, it is not the number of duties that are listed which establish a position as a specialty occupation. Rather it is the detail included within the description of duties that is necessary to properly ascertain the minimum educational requirements necessary to perform the duties.

We have further considered the Petitioner's claim on appeal that the job advertisements it submitted establish that a degree requirement is common to the industry in parallel positions among similar organizations. However, as the Petitioner has not sufficiently and consistently described the position such that we can find the proffered position is a mechanical engineering position. Thus, the job postings the Petitioner submitted and refers to on appeal are of limited probative value. In any event, it is evident upon a review of the brief descriptions in the job advertisements that the advertised positions are not similar to the duties of the proffered position. Moreover, several of the advertisements submitted do not require a bachelor's degree in a specific field of study.

We again emphasize that it is not possible to ascertain from the Petitioner's broad and inconsistent descriptions exactly what duties the Beneficiary will be expected to perform. Thus, we are unable to ascertain whether those duties will incorporate the theoretical and practical application of a body of highly specialized knowledge, associated with the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent, as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. Without additional information and documentation establishing the specific duties the Beneficiary would perform, we are unable to discern the substantive nature of the position and whether the proffered position indeed qualifies as a specialty occupation.

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<sup>6</sup> When viewed within the context of the Petitioner's operations, it appears that the vaguely described duties may fall within the occupation of a computer support specialist and not of a mechanical engineer. For example, providing technical support to manufacturing customers and internal staff, resolving technical issues and documenting them for internal and customer consumption, presenting training on Autodesk® products and support issues, corresponds more closely to that of a help desk technician as generally described in the *Handbook's* chapter on computer support specialists. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Computer Support Specialists," <https://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-2> (last visited Jan. 18, 2017). We note here, however, that according to the *Handbook*, positions within the occupational category of computer support specialists do not require a bachelor's degree. "Because of the wide range of skills used in different computer support jobs, there are many paths into the occupation. A bachelor's degree is required for some computer support specialist positions, but an associate's degree or postsecondary classes may be enough for others." *Id.* at <https://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-4> (last visited Jan. 18, 2017).

Consequently, we are 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 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. As the Petitioner has not established that it satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation.

#### IV. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of K-T-O-C-, Inc.*, ID# 186320 (AAO Jan. 26, 2017)