



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

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

MATTER OF B-P-P- PC

DATE: JULY 25, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a medical clinic, seeks to temporarily employ the Beneficiary as a “management 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 revoked the approval of the petition, and reaffirmed the revocation on a subsequent motion to reopen and reconsider. The Petitioner then submitted an appeal. We dismissed the appeal on the basis that (1) the Director properly revoked the petition because the Petitioner was not employing the Beneficiary according to the terms and conditions of the approved petition; and (2) the job offered does not qualify as a specialty occupation under the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The matter is before us on a motion to reopen and motion to reconsider. In its combined motion, the Petitioner submits additional evidence and asserts that (1) it had not given the Beneficiary new duties; and (2) the proffered position qualifies as a specialty occupation. We will deny the motions.

**I. MOTION REQUIREMENTS**

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

## II. ANALYSIS

### A. Motion to Reopen

In our decision dismissing the appeal, we concluded that the Petitioner had not demonstrated that the proffered position qualifies as a specialty occupation. On motion, the Petitioner submits its job notice dated September 2012, letters from companies which posted that job notice, and vacancy announcements by other companies, as evidence of the position's qualification under the specialty occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). We will discuss the submitted documents below.

The Petitioner submitted its September 2012 job notice for a part-time "health care management analyst" position as evidence of the Petitioner's normal employment practices under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). While this job posting is new in that it was not previously submitted, it does not present new facts that would overcome our reasons for finding that the Petitioner did not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The same type of evidence, i.e., the Petitioner's earlier job posting dated March 2011, was previously submitted and considered insufficient on appeal. In particular, we stated in our prior decision that, although the Petitioner's job posting indicates a requirement of a bachelor's degree in a health field, that posting does not list job duties for the advertised position; thus we are unable to determine if the advertised position is similar or same as the proffered position. The Petitioner's newly submitted job posting again does not contain any job duties; thus, we are still unable to determine if the advertised position is similar to the proffered position.

Also under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the Petitioner submits letters from three companies verifying that the Petitioner's September 2012 job notice was posted at their premises. However, the Petitioner has not explained the significance of these letters. Like the underlying job posting, these letters do not contain any details about the actual job duties to be performed. Thus, these letters do not establish whether the Petitioner's advertised position is similar or same as the proffered position.

Additionally, the Petitioner submits three vacancy announcements for "management analyst" positions posted by an engineering company, a scientific, engineering and operational support company, and a federal government agency. The Petitioner submits these documents as evidence under the second alternative prong of the specialty occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Yet the Petitioner has not explained how these documents demonstrate that the Petitioner's job requirement is common to the industry in parallel positions among similar organizations. The Petitioner expressly acknowledges on motion that these vacancy announcements are "for different industry."

A review of these vacancy announcements not only confirms that these companies are not in the same industry as the Petitioner, but also indicates that they are for dissimilar positions among dissimilar organizations. For example, the position for the federal agency requires the candidate to

perform job duties related to computer security programs and activities. These are not duties that the Petitioner has described for the Beneficiary. And contrary to the purpose for which the vacancy announcements were apparently submitted, none of the advertisements specify a minimum educational requirement of at least a bachelor's degree *in a specific specialty*, or the equivalent. Although the announcements indicate a requirement of at least a bachelor's degree plus "relevant" or "specialized" experience, the announcements do not further describe the type of bachelor's degree, or the type and amount of experience, required.

The Petitioner has not submitted other documents that constitute as new evidence or otherwise demonstrate new facts that overcome our reasons for dismissing the appeal. Accordingly, the motion to reopen will be denied.

#### B. Motion to Reconsider

In our decision dismissing the appeal, we concluded that Petitioner was not employing the Beneficiary according to the terms and conditions of the approved petition. More specifically, we recalled the results of an administrative site visit indicating that the Beneficiary was performing duties including billing and checking insurance. We noted some documentation's reference to the Beneficiary as a "medical manager-leader" and "training specialist," but not a management analyst. We also pointed out that the Petitioner's job description involving documentation duties for [REDACTED] certification, and the [REDACTED] submitted in response to the Director's notice of intent materially changed from the initial job description.

On motion, the Petitioner does not directly address the Beneficiary's billing and insurance related duties. The Petitioner also does not address the Beneficiary's alternative job titles. The Petitioner thus has not demonstrated that the Beneficiary will only be performing specialty-occupation caliber duties that are consistent with the terms and conditions of the approved petition.

Also on motion, the Petitioner claims that it did not give the Beneficiary new duties but instead expanded upon previously stated duties. The Petitioner explains that the duties of preparing documentation for [REDACTED] certification, and the [REDACTED] are not new because they are part of her initially stated "responsibility for improving efficiency of patient treatment." We are not persuaded.

First, the Petitioner does not further explain how the Beneficiary's documentation duties for [REDACTED] certification, and the [REDACTED] are consistent with her initial job duty of "suggest ways to improve efficiency of patient treatment through Electronic medical records." The Petitioner initially described that duty as follows:

**Suggest ways to improve efficiency of patient treatment through Electronic medical records like giving preventative measures cares for the patient with Obesity, Diabetes Mellitus, Hypertension, etc., maintaining the system to make it**

**easy for the doctor and other employee to operate, inventory organization, billing management** and effectively resolve their complaints and concerns. (20%)

Although elsewhere in the record the Petitioner separately mentioned that the Beneficiary will be in charge of the ' application for program . . . [for] getting the organization certificate for home health care<sup>1</sup>," the Petitioner did not mention this in the context of suggesting ways to improve efficiency of patient treatment through Electronic medical records.

Indeed, the Petitioner's subsequent job descriptions confirm that these are all separate and distinct duties accounting for different percentages of the Beneficiary's time. In the job description submitted in response to the notice of intent to revoke, the Petitioner labeled the Beneficiary's responsibilities involving certification, and the as "duties for extra hours" that are "in addition" to the originally-listed duties. In the job description submitted with the motion on the Director's decision, the Petitioner even assigned different percentages of time to the duties of "suggest ways to improve efficiency of patient treatment" (20% of time), related duties (another 20% of time), certification duties (5% of time), and duties (another 5% of time). Thus, it appears that the Petitioner materially changed aspects of the proffered position over time, and was not employing the Beneficiary in the same capacity as initially described.

Our prior decision also offered reasons why we believe the proffered position does not qualify as a specialty occupation. For instance, under the first specialty occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), we discussed why the *Occupational Outlook Handbook (Handbook)* does not support a finding that at least a bachelor's degree *in a specific specialty* (or the equivalent) is normally required for entry into this or other positions under the "Management Analyst" occupation. We highlighted the *Handbook's* language indicating that degrees in various disparate fields (such as political science, accounting, psychology, and English) are adequate for entry into this occupational category, and the lack of evidence that these fields directly relate to the duties and responsibilities of this position. On motion, the Petitioner cites to our prior discussion of the *Handbook*, but does not specifically explain how our analysis was erroneous.

Instead, the Petitioner repeats statements it previously made about the proffered position's educational requirement of "a Bachelor's degree in Medicine with knowledge of Management or equivalent." The Petitioner further repeats its belief that people without a bachelor's degree "will not be able to perform the duties as mentioned above, since only a person, who has the pertinent Baccalaureate Degree, will have the specific knowledge of Reasoning, Language and Mathematical Development as required for the position of Management Analyst." Nevertheless, the Petitioner has not explained how duties such as inventory organization, billing management, and checking insurance require such a bachelor's degree.

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<sup>1</sup> The Petitioner claims to be a medical clinic with "2+" employees, not a home health care provider.

The Petitioner additionally claims to have shown eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). But the Petitioner's statements on motion do not address the deficiencies we previously identified under those criteria, either. For instance we stated that, while a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of 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. We also stated in our prior decision that information about the Beneficiary's qualifications for the position is not relevant to establishing the proffered position's qualification as a specialty occupation. The Petitioner has not sufficiently demonstrated how our analysis under these or other regulatory criteria was erroneous as a matter of law or policy.

The Petitioner has not established that our prior decision was incorrect at the time of that decision. Therefore, the motion to reconsider will be denied.

### III. CONCLUSION

The Petitioner has not met the requirements for a motion to reopen or a motion to reconsider.

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of B-P-P- PC*, ID# 432760 (AAO July 25, 2017)