



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

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

MATTER OF K-NY, INC.

DATE: JULY 31, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a website design and search engine optimization business, seeks to temporarily employ the Beneficiary as a “project manager” 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 denied the petition. The Petitioner appealed the denial, which we dismissed on the basis that: (1) the position offered to the Beneficiary does not qualify as a specialty occupation; and (2) the Beneficiary does not qualify for a specialty occupation.

The matter is before us on a combined motion to reopen and motion to reconsider. In its combined motion, the Petitioner submits additional evidence and asserts that our decision was erroneous. 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

On motion the Petitioner presents a new statement of the Beneficiary’s qualifications for the proffered position. This statement explains how five of the Beneficiary’s courses from his bachelor’s degree in mechanical engineering “are in direct relation to the job responsibilities of a project

manager.” According to the Petitioner, the proffered position requires at least a bachelor’s degree in management, or its equivalent.

To the extent that the Petitioner implies the Beneficiary’s degree in mechanical engineering is equivalent to a degree in management based on academic coursework alone (a claim not previously made), we are not persuaded. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how these courses (e.g., Engineering Principles and Introduction to Mechanical Engineering Practice) are reflective of an established curriculum of courses leading to a bachelor’s degree in management.

The Petitioner’s new statement also references an evaluation from [REDACTED] concluding that the combination of the Beneficiary’s education and work experience is equivalent to a bachelor’s degree in management. Because this evaluation was previously submitted and considered, we will address it further in our discussion of the motion to reconsider.

The Petitioner additionally submits a new affidavit which largely reiterates previously stated information. The only new information this affidavit presents is the statement that the “Beneficiary has no [i]nvolvement in any of company finances or [payroll] decisions.” Because this statement relates to concerns about the Petitioner’s job descriptions which we addressed in our prior decision, we will also address this claimed aspect of the proffered position in our discussion of the motion to reconsider.

The rest of the Petitioner’s motion consists of copies of previously submitted and considered evidence. We find that the Petitioner has not met the requirements of a motion to reopen.

B. Motion to Reconsider

Nor has the Petitioner met the requirements of a motion to reconsider by demonstrating that our prior decision to dismiss the appeal was incorrect.

The Petitioner disagrees with our finding that the job descriptions materially changed in response to the Director’s request for evidence (RFE). With this motion the Petitioner presents a chart “showing the duties side-by-side . . . to prove that [the RFE job duties] were an extension of the original job duties.” However, the Petitioner’s chart does not show any corresponding RFE job duties for approximately half of the initially listed job duties. To illustrate, the initially listed job duties of “[ensuring] workers have the resources to complete their work” and “[performing] human resource activities, such as performance evaluations, hiring and discipline” have no counterpart according to the Petitioner’s chart. The record does not demonstrate how job duties such as those involving the Petitioner’s human resources functions, for example, are consistent with the later stated job duties which were copied verbatim from the Occupational Information Network (O*NET) Online Summary Report for “Information Technology Project Managers.”

As indicated above, on motion the Petitioner submits a new affidavit stating that the Beneficiary “has no [i]nvolvement in any of company finances or [payroll] decisions.” But as also discussed above, the Petitioner initially stated that the Beneficiary will perform human resource activities, including hiring and disciplinary activities. These statements appear inconsistent with each other.

Further on motion, the Petitioner claims that the initially stated job duties of assisting the company’s goals and objectives related to sales, productivity, and profitability have not changed. It states: “Sales correlate to budget, schedule and scope of a project lend itself to calculating productivity and profitability.” Yet the Petitioner also states that the Beneficiary has no involvement in any of company’s financial or marketing decisions. The Petitioner has not reconciled these apparently inconsistent statements about the Beneficiary’s role and responsibilities for the Petitioner, either. Rather than clarifying the substantive nature of the Beneficiary’s job duties, we find that the Petitioner’s statements on motion further cloud our understanding of the proffered position.

With respect to our analysis under the first specialty occupation criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the Petitioner points out that the proffered position falls under the occupational sub-code and sub-category of 15-1199.09, “Information Technology Project Managers” (under the broader occupational code and category of 15-1199, “Computer Occupations, All Other”), which has a Job Zone Level 4 rating in O*NET. This Job Zone rating indicates that most, but not all, of these occupations require a four-year bachelor’s degree.

But we find that O*NET’s Job Zone ratings are not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is normally required for entry into a position. That is, O*NET’s Job Zone designations make no mention of any specific field of study from which a degree must come.¹ As we said in our previous decision, we interpret 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); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). Accordingly, even if we assume that the “Information Technology Project Managers” classification and its Job Zone 4 rating are appropriate for the proffered position, this information is still insufficient to demonstrate the position’s eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) (or any other specialty occupation criteria).

With respect to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2), the Petitioner disagrees with our analysis of [redacted] evaluation. Citing to *Matter of Sea Inc.*, 19 I&N Dec. 817, 820 (Comm’r 1988) and *Button Depot, Inc. v. U.S. Dept. of Homeland Sec.*, 386 F. Supp. 2d 1140 (C.D. Cal. 2005), the Petitioner contends that we should have considered [redacted] an “expert,” notwithstanding “his lack of presenting that he has researched, run surveys or engaged in any deeper understanding of the minimum education required for the project manager position.”

¹ For more information, see O*NET OnLine Help – Job Zones, <https://www.onetonline.org/help/online/zones> (last visited July 31, 2017).

We are not persuaded. To start, *Matter of Sea* and *Button Depot* relate to a beneficiary's qualifications for a proffered position, not a position's qualification as a specialty occupation under one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Moreover, while we agree that the regulations and case law do not necessarily require [REDACTED] to have conducted research or surveys into this particular position's job requirements, we do not agree with the Petitioner's general proposition that any university professor should be considered "[a]n expert in the field" and should be "accepted as an authority for H-1B specialty occupation." See *Matter of Caron Intl., Inc.*, 19 I&N Dec. 791, 795 (BIA 1988) (we are not required to accept or may give less weight to advisory opinion statements, including those from universities, when those opinions are not in accord with other information or is in any way questionable). In order for us to give an "expert" opinion due weight in this matter, the Petitioner must demonstrate that the writer possessed a sufficient understanding of the actual position being offered, whether gained through research, surveys, or other empirical methods. The Petitioner has not done so here.

For example, we explained in our prior decision that [REDACTED] did not address an important aspect of this position: its Level II wage rate designation. This wage rate designation undermines [REDACTED] statements about this position's "specialized and complex" duties, and raises questions as to his level of understanding about this position. The Petitioner's motion does not address this deficiency. Also, we now observe that [REDACTED] evaluation appears to have been based solely on the Petitioner's initially stated job description. As we discussed above and in our prior decision, the Petitioner's job descriptions materially changed over the course of these proceedings. As such, [REDACTED] evaluation appears to have been based on an incomplete or inaccurate review of this position, thus constituting a faulty factual basis for his ultimate conclusions. The Petitioner has not demonstrated that we erred in not accepting [REDACTED] evaluation as probative evidence under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2).

The instant motion does not address our analysis under any other specialty occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the Petitioner has not demonstrated that we erred in dismissing the appeal on the basis that the position offered to the Beneficiary does not qualify as a specialty occupation.

Finally, the Petitioner has not demonstrated that we erred in dismissing the appeal on the basis of the Beneficiary's qualifications.

In this respect, the Petitioner again relies on [REDACTED] evaluation. The Petitioner also relies on a previously submitted letter regarding [REDACTED] authority to grant [REDACTED] credits through [REDACTED] degree completion program offered through the [REDACTED]. This letter states that "[m]ore information about the [REDACTED] can be found at [www.\[REDACTED\]](#) and following the link to [REDACTED]" The Petitioner claims that we erred by not considering these documents under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

However, the Petitioner has not provided additional information about the “[REDACTED]” credits that [REDACTED] is purportedly authorized to grant. We were unable to locate a direct link to the “[REDACTED]” on [REDACTED] website, and the Petitioner has not submitted print-outs from the university’s website for the record.

While we located information on the university’s website about the “Accelerated Degree Completion Program” which offers students the chance to “build upon [their] current education, work experience and life accomplishments to complete [their] undergraduate degree,”² this information: (1) is not described within the context of the “[REDACTED]”; (2) does not indicate that “[REDACTED]” credits are granted based solely on an individual’s “training and/or work experience”; and (3) does not indicate that students may obtain a bachelor’s degree specifically in the field of management through this accelerated program.³ The Petitioner has not overcome our finding that the record does not demonstrate [REDACTED] authority to grant college-level credit according to the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

The Petitioner’s motion does not address other aspects of our discussion regarding the Beneficiary’s qualifications for the proffered position. We find that the Petitioner has not met the requirements of a motion to reconsider.

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 K-NY Inc.*, ID# 499617 (AAO July 31, 2017)

² [REDACTED] Accelerated Degree Completion Program Options, [http://www.\[REDACTED\]](http://www.[REDACTED]) (last visited July 31, 2017).

³ See *id.*