



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

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

MATTER OF C-C-C-, LLC

DATE: JUNE 5, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a telecommunications company, seeks to temporarily employ the Beneficiary as an “analyst 2, business intelligence” 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 Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish that the Beneficiary was qualified for the proffered position. On appeal, the Petitioner submits additional evidence and asserts that the Director mischaracterized the duties of the position and that the Beneficiary possesses the minimum requirements to perform in a specialty occupation.

We conduct *de novo* review on appeal, and we note that a beneficiary’s credentials to perform a particular job are relevant only when we find the job to be a specialty occupation. As we will discuss below, the record does not establish that the proffered position requires a baccalaureate or higher degree in a specific specialty, or its equivalent. Accordingly, we will remand the matter to the Director for further review of the record and to issue a new decision.

**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.

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” 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 petition, the Petitioner stated that the Beneficiary will serve as an “analyst 2, business intelligence” and in this role he will be responsible for the following duties:

Analyzing data, covering a wide range of subject areas, including finance, sales, marketing, field operations, care, and customer valuation, with the goal of ensuring business decisions are in alignment with company goals. He will work cross-functionally to identify business opportunities, brainstorm approaches and analytical frameworks, develop roadmaps and collection requirements, acquire data, execute analyses, and present actionable recommendations. Specifically, he will perform all business intelligence analysis and data exploitation; extract signals and signatures from raw data, integrate that information with other data sources, and compile and distribute formatted reports to customers; recommend improvements to competitive business intelligence reports; interpret data produced by various departments, including sales, business development, product, and executive committees; plan and execute system testing; maintain awareness of each customer’s mission, utilize this knowledge to ensure customer satisfaction; lead the analysis and reconciliation of data and project reports, and initiate the delivery of documentation;

develop, maintain, and report all relevant product, site, and customer metrics, and apply results to develop appropriate goals and projections; and train junior level analysts throughout the company in using key analytical and forecasting tools and statistical analysis.

According to the Petitioner, the position requires (1) a bachelor's degree (or foreign equivalent) in computer science, engineering, or a related technical field; and (2) previous experience in business intelligence analysis.<sup>1</sup>

### III. ANALYSIS

We have reviewed the entire record of proceedings before us. While the Petitioner's appeal brief focuses on elements it believes were in error within the Director's decision, we will discuss those elements that pertain to the position qualifying as a specialty occupation.

For the reasons discussed below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.<sup>2</sup> Specifically, we find that the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>3</sup>

#### A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which 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.

On the labor condition application (LCA) the Petitioner presented in support of this petition, it classified the proffered position under the occupational title "Computer Occupations, All Other," corresponding to the SOC code 15-1199 at a Level I wage rate.<sup>4</sup> We often look to the U.S.

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<sup>1</sup> In response to the Director's request for evidence (RFE), the Petitioner provided additional details and referenced the tasks in the U.S. Department of Labor's (DOL) Occupational Information Network (O\*NET) summary report for "Business Intelligence Analysts" listed as Standard Occupational Classification (SOC) code 15.1199.08. We reviewed the record in its entirety.

<sup>2</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

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

<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

Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, which is an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>5</sup> However, there are some occupations for which detailed profiles have not been developed, such as for the occupational category "Computer Occupations, All Other."<sup>6</sup>

When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is the Petitioner's burden to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

In the instant case, the Petitioner submitted the Occupational Information Network (O\*NET) Summary Report for "Business Intelligence Analysts." The printout provided general information regarding the occupation; however, it did not support the Petitioner's assertion regarding the educational requirements for this position. For example, the Specialized Vocational Preparation (SVP) rating cited within O\*NET's Job Zone designates this occupation as 7 < 8. An SVP rating of 7 to less than ("<") 8 indicates that the occupation requires "over 2 years up to and including 4 years" of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience. Further, it does not specify the particular type of degree, if any, that a position would require.<sup>7</sup>

Further, the summary report provides the educational requirements of "respondents," but does not account for 100% of the "respondents." The respondents' positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the "education level" for the respondents must be in a specific specialty.

The Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Therefore, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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

<sup>5</sup> We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. 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/>.

<sup>6</sup> For additional information, see <https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm>.

<sup>7</sup> For additional information, see the O\*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

## 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 concentrates on 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. U.S. Citizenship and Immigration Services (USCIS) generally considers the following factors to determine if there is such a common degree requirement: 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 establish 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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a 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. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry attesting that such firms “routinely employ and recruit only degreed individuals.”

Throughout the proceedings, the Petitioner has not claimed to qualify under this prong of the second criterion, nor has it offered evidence to apply to this provision. Thus, the Petitioner has not satisfied the first prong.

### 2. Second Prong

The second alternative prong 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. The Petitioner has not asserted, nor has it provided evidence in support of this prong of the second criterion.

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 record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. *See Defensor v. Meissner*, 201 F.3d at 387-88. Were USCIS limited solely to reviewing the Petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement. *Id.* Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

We reviewed the Petitioner's statements regarding the proffered position. However, it does not assert, and has not provided evidence in support of this criterion. Therefore, it has not satisfied the third criterion at 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.

According to the Petitioner, the duties of the proffered position are so specialized and complex, the knowledge required to perform these duties is normally associated with the attainment of a minimum of a bachelor's degree, or an equivalent in computer science, engineering, or a related technical field. In support of this statement, the Petitioner's appeal contains an October 2016 opinion letter from [REDACTED] a marketing professor at [REDACTED]

In his letter, [REDACTED] describes the credentials that he asserts qualify him to opine about the nature of the proffered position; and states that the duties listed in the proffered position's job description, and in the Petitioner's H-1B support letter require at least a bachelor's degree in technical fields such as engineering, information science, or analytics as a minimum for entry into the occupation. We carefully evaluated [REDACTED] assertions in support of the petition but, for the following reasons, determined his opinions lent little probative value.

First, [REDACTED] does not provide sufficient information to establish his expertise on the practices of organizations seeking to hire "analyst 2, business intelligence." Without further clarification, it is unclear how his education, training, skills, or experience would translate to expertise regarding the current recruiting and hiring practices of an enterprise engaged in telecommunications (as designated by the Petitioner in the petition) or similar organizations for an

analyst 2, business intelligence (or parallel positions). [REDACTED] does not describe how his background qualifies him to determine employers' minimum entry requirements for jobs such as the proffered position.

Although [REDACTED] states that he based his assessment on the Petitioner's description of the company and its characterization of the offered position, his letter lacks sufficient information on the petitioning organization's business activities. That is, he does not demonstrate an in-depth knowledge of the Petitioner's operations, or how the Beneficiary would perform the position's duties in the context of its business enterprise. Accordingly, we find the record does not demonstrate that [REDACTED] is a qualified authority to opine on the current requirements for analyst 2, business intelligence positions.

Further, [REDACTED] opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the Petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. His opinion letter does not reflect that he has published any works on the academic or experience requirements for analyst 2, business intelligence (or related issues).<sup>8</sup>

Even assuming [REDACTED] was an expert on degree requirements for an analyst 2, business intelligence, his letter testimony does not substantiate his conclusions, such that we can conclude that the Petitioner has shouldered its burden of proof. First, [REDACTED] does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation. Second, he does not discuss the duties of the proffered position in any substantive detail. To the contrary, he only stated that he reviewed the material the Petitioner provided.

Finally, the record does not indicate whether [REDACTED] was aware that, as indicated by the Level I wage on the LCA, the Petitioner considered the proffered position to be an entry-level analyst 2, business intelligence position for a beginning employee who has only a basic understanding of the occupation. In other words, the Petitioner has not demonstrated that [REDACTED] possessed the requisite information to adequately assess the nature of the position and appropriately determine parallel positions based upon the job duties and level of responsibilities. As such, we find that [REDACTED] opinion letter lends little probative value, and thus the Petitioner has not satisfied the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

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<sup>8</sup> [REDACTED] states that he has authored several articles and books; however, neither he nor the Petitioner presented evidence of such publications or explained how his published material is related to the issue here.

#### IV. CONCLUSION

As the Petitioner was not previously accorded the opportunity to address the deficiencies in the record regarding the specialty occupation nature of the proffered position, we will remand the record for further review of this issue. The Director may request any additional evidence considered pertinent to the new determination.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of C-C-C-, LLC*, ID# 321042 (AAO June 5, 2017)