



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

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

MATTER OF H-F- LLC

DATE: JUNE 29, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology (IT) services company, seeks to temporarily employ the Beneficiary as a “computer systems analyst-QA” 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 California Service Center denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish that the position qualified as a specialty occupation.

On appeal, the Petitioner asserts that the record sufficiently demonstrates that the proffered position is a qualifying specialty occupation.

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.

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 offered 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 offered a description of the proffered position’s duties and the time a computer systems analyst-QA will devote to each activity, to include:

| Duty | % Time |
|--|--------|
| 1. study, evaluate and analyze systems & QA requirements, procedures, and problems - Evaluate and analyze current system - Understand user requests for new functions and enhancements to the system - Conceptualize solutions to new requirements, enhancements and problems. - Analyze the company's data processing requirements and computer hardware to determine the software which will best serve the business needs. - Translate user needs into software requirement specifications. | 25 |
| 2. Formulate plans for implementation. - Document the scope and objectives of the new development or enhancement. - Outline the steps required to develop new or modified programs. - Identify the system integration, linkage, and security issues. | 15 |

| | |
|--|------------|
| - Define system deliverables. | |
| 3. Plan and prepare technical reports. - Prepare data model for technical reference. - Prepare process model for functional reference. - Determine the data base level changes for enhancement or new program. - Write scripts to perform the data base changes. | 10 |
| 4. Develop full system model - Complete detail system specifications - Design and build database. - Code the front-end by creating forms, queries, menus and functions. - Develop validation checks, edit checks and lookup tables - Design and develop reports, queries and filters. - Create on-line help text. - Design and code the required security constraints within the program. - Write scripts to load data if required. | 20 |
| 6. [sic] Provide support for user testing, user acceptance and implementation. - Install and maintain the system; generate reports; modify the system. - Identify users for testing. - Create testing log and problem log. - Fine tune the full system model by incorporating results from user testing. - Obtain user approval. - Develop installation procedures, methodology and installation tools. | 10 |
| 7. Provide Training and Documentation. - Prepare technical documentation. - Prepare operational documentation. - Prepare operations training course and material. - Provide training to the users. | 10 |
| 8. Provide production support. - Maintain and enhance the capabilities of the system. - Create knowledge base for online help; Program day to day changes in reports. | 10 |
| | 100 |

The Petitioner further stated that the position is a specialty occupation as the duties are complex and require a bachelor's degree in computer science, information systems, engineering, or a related field.¹

III. ANALYSIS

The Director denied the petition, noting the Petitioner had not demonstrated that there was work available for the Beneficiary at the time of filing because the submitted contracts postdated the petition filing date. On appeal, the Petitioner submits material reflecting the petitioning organization's plans for the Beneficiary's work commitments that predates the petition filing. However, the Petitioner did not explain why it did not previously submit this material when the Director requested such evidence. We reviewed the evidence but even considering the newly offered documentation, the Petitioner has not established that the position qualifies as a specialty occupation.

We have reviewed the entire record of proceedings before us. For the reasons discussed below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.² 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.³

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. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴

On the labor condition application (LCA) the Petitioner presented in support of this petition, it classified the proffered position under the occupational title "Computer Systems Analysts," corresponding to the Standard Occupational Classification code 15-1121 at a Level I wage rate.⁵

¹ On appeal, the Petitioner argues that the proffered position qualifies due to the complex duties, and "the usual minimum requirement for performance of the job duties is a bachelor's degree, or equivalent, in computers, engineering, or a related field."

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

³ 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.

⁴ 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/OCO/>.

⁵ 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 she

Turning to the *Handbook*, we note that the subchapter entitled “How to Become a Computer Systems Analyst” states, in pertinent part: “A bachelor’s degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming.”⁶ The *Handbook* also states: “Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.”⁷

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 fact, this chapter 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. It 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, this passage reports that there are several paths for entry into the occupation, and it does not support the Petitioner’s assertion that a bachelor’s degree in computers, engineering, or a related field is required for entry into this occupation.

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)(1).

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

will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she 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://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.*

⁶ See the *Handbook*, Computer Systems Analysts (2016-17 ed.).

⁷ *Id.*

equivalent) is common to the industry in parallel positions among similar organizations. USCIS generally considers the following factors to determine whether 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."

In support of this criterion, the Petitioner submitted several job postings from other employers it characterized as "cross industry advertisements where the minimum requirement is a baccalaureate degree." However, the Petitioner's reliance on the postings is misplaced.⁸ We further note that the job postings do not appear to be organizations similar to the Petitioner. For example, the Petitioner is a nine-person, IT services company, whereas the advertising organizations include:

- [REDACTED] – the global payments technology company best known for its credit and debit cards;
- [REDACTED] – a New York area health care provider;
- The government of [REDACTED]
- [REDACTED] – one of the world's largest independent IT, and business process services companies; and
- [REDACTED] – a renowned IT, systems engineering, and professional services company.

The Petitioner did not supplement the record of proceedings to establish that these organizations are similar. When determining whether the Petitioner and the organization share the same general characteristics. Such factors may include information regarding the nature or type of organization, the particular scope of operations, and the level of revenue and staffing (to list just a few elements

⁸ Even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

In addition, many of the advertisements do not appear to be for parallel positions. For example, some of the positions appear to be for more senior positions than the proffered position.⁹ More importantly, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

Without more, the Petitioner has not provided sufficient evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, the Petitioner has not satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which 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.

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner described its operations and repeatedly asserts that the duties are complex and they require a bachelor's degree in computer science, information system, engineering, or a related field. However, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Again, it appears that the Petitioner has designed the position as one that is entry-level, for an employee who has only a basic understanding of the occupation by classifying it as a Level I position on the LCA.¹⁰ The Petitioner's description of the duties does not

⁹ For instance, the posting for [REDACTED] prefers a master's degree, but requires a bachelor's degree, three years of relevant systems experience, and one year of project management experience. In addition, one of the advertisements for [REDACTED] requires a bachelor's degree and a minimum of 4+ years of experience.

¹⁰ The Petitioner contends on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other computer systems analyst-QA positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform the duties.

The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The duties as described also do not refute the *Handbook*'s statement that a bachelor's degree in a computer or information science field is not always a requirement.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references the Beneficiary's education credentials. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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.

The Petitioner offered two of its own newspaper job advertisements in support of this criterion. However, this evidence relates to a position with different job title and duties from the proffered position. Thus, it is not relevant to the matter here.

The Petitioner also submitted material regarding several individuals. However, these individuals occupy positions with different job titles from the proffered position. Further, the Petitioner has not established that they are providing the same or similar services as the Beneficiary would provide in the proffered position. As a result, the material related to its employees is not relevant to this criterion's requirements.

The Petitioner also provided a document that it characterizes as a job posting. Although the material reflects the Petitioner posted the announcement for 14 days, it did not provide corroborating material establishing the timeframe that it displayed this job posting at its office. Moreover, the documentation appears to be a notice in connection with DOL's posting requirements for LCAs. *See* 20 C.F.R. § 655.734.¹¹ Moreover, as the job posting is only a solicitation for hire, it is not evidence

¹¹ The purpose of DOL's posting requirement is to notify the bargaining representative and the petitioning company's

of the Petitioner's actual hiring practices. We further note that the Petitioner was established in 2012 – four years before the petition was filed. Thus, it cannot be determined how representative this one job posting (over a four year period) is of the Petitioner's hiring practices for the proffered position. Without additional information, the submission is not persuasive in establishing that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position.

The Petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. 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.

While the Petitioner provided a detailed job description, the description does not establish that the duties are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (of the lowest of four assignable wage-levels) relative to others within the occupational category.¹² Without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties, as such a position within this occupational category would likely be classified at a higher-level, requiring a substantially higher prevailing wage.¹³

Although the Petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Thus, the Petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

employees that a petitioner intends to hire a foreign worker and provide basic information about the position (e.g., occupation, wage, period of employment), as well as to direct complaints to DOL's Wage and Hour Division.

¹² Furthermore, the Petitioner's claim that "[f]or a position at the level offered, it is not uncommon for the incumbent to also possess a master's degree and/or a number of years of experience" is inconsistent with its designation of the position as a Level I, entry-level position.

¹³ For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage. For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

IV. CONCLUSION

As the Petitioner has not satisfied at least 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.

ORDER: The appeal is dismissed.

Cite as *Matter of H-F- LLC*, ID# 483330 (AAO June 29, 2017)