



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

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

MATTER OF P-D-S-

DATE: MAR. 31, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an administrative and business support services company, seeks to temporarily employ the Beneficiary as an “operations research analyst” under the H-1B nonimmigrant classification. *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 petition, concluding that the evidence of record was insufficient to establish, as required, that the proffered position is a specialty occupation.

On appeal, the Petitioner submits a brief and additional evidence and asserts that the Director’s decision was erroneous.

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 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

The Petitioner identified the proffered position as an “operations research analyst” in the H-1B petition. In response to the Director’s request for evidence (RFE), the Petitioner provided the following list of duties of the proffered position:

- Develop, manage and maintain PPC, search, and digital ad network campaigns, continuously improving bottom line ROI and KPIs[.]
- Manage and optimize Digital Marketing initiatives for 500+ affiliated dental offices nationwide.
- Collaborate with internal stakeholders to provide comprehensive marketing optimization opportunities.
- Analyze reports, develop new and improved methods of reporting on data;
- Strategize ways of improving programs and processes; implement and execute new strategies; deliver on established KPIs.
- Manage the data collection for report generating as well as create and update daily, weekly, and monthly reporting dashboards to be distributed internally.
- Provide statistical information for websites and campaigns.
- Create training material to educate relevant internal stakeholders of essential functions.
- Manage online reputation by keeping individual listings up to date.
- Serve as liaison for offices and online reviewers.
- Manager adverse review resolution efforts[.]

- Execute established best practices.
- Examine trends with online directories and identify areas of potential improvements.
- Research and audit online presence, determine effectiveness of campaign in multiple channels including social media[.]
- Direct and manage various projects as required by operational needs.

The Petitioner stated that these duties “can only be performed by an individual who has attained at a minimum a [bachelor’s] degree.”

### III. ANALYSIS

As a preliminary matter, the Petitioner’s claim that a bachelor’s degree is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies 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.

The Petitioner asserts that its minimum requirement for the proffered position is only a bachelor’s degree, without further requiring that the degree be in any specific specialty. Without more, the Petitioner’s statement alone indicates that the proffered position is not in fact a specialty occupation. The Director’s decision must therefore be affirmed and the appeal dismissed on this basis alone.

Nevertheless, we will review the Petitioner’s general description of duties and the evidence of record to determine whether the proffered position as described would qualify for classification as a specialty occupation.<sup>1</sup> To that end and to make our determination as to whether the employment described above qualifies as a specialty occupation, we turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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<sup>1</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.

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.<sup>2</sup>

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 "Operations Research Analysts," corresponding to the Standard Occupational Classification (SOC) code 15-2031 at a Level I wage.<sup>4</sup>

The subchapter of the *Handbook* entitled "How to Become an Operations Research Analyst" states, in relevant part, the following:

Although some employers prefer to hire applicants with a master's degree, many entry-level positions are available for those with a bachelor's degree. Although some schools offer bachelor's and advanced degree programs in operations research, some analysts have degrees in other technical or quantitative fields, such as engineering, computer science, analytics, or mathematics.

Because operations research is based on quantitative analysis, students need extensive coursework in mathematics. Courses include statistics, calculus, and linear algebra. Coursework in computer science is important because analysts rely on advanced statistical and database software to analyze and model data. Courses in other areas,

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<sup>2</sup> All of our references are to the 2016-17 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

<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> 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.*

such as engineering, economics, and political science, are useful because operations research is a multidisciplinary field with a wide variety of applications.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Operations Research Analysts, <https://www.bls.gov/ooh/math/operations-research-analysts.htm#tab-4> (last visited Mar. 29, 2017).

The *Handbook* indicates that the occupational category accepts a wide variety of degrees for entry in to the occupation, including disparate fields such as engineering, mathematics, computer science, economics, and political science. The *Handbook*, therefore, does not support a claim that "Operations Research Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

We have reviewed the Petitioner's reference to the Foreign Labor Certification Data Center's Online Wage Library report for the occupation of operations research analyst. The Petitioner relies on the report's assignment of an Education & Training Code "3 – Master's degree" as evidence that the proffered position is a specialty occupation. However, the report does not indicate that the master's degrees that may be required by such occupations, included in the Occupational Information Network (O\*NET) OnLine's Job Zone "Five," must be in a specific specialty directly related to the occupation. Therefore, this information does not establish the proffered position as a specialty occupation.

In addition, the Petitioner submits an article by [REDACTED] which discusses what level of college education is required to become an operations research analyst. This article, like the *Handbook*, again acknowledges that a bachelor's level of education is a standard minimum threshold for entry into the occupational category. However, it also states that degrees in any number of fields, including computer science, engineering, math, as well as economics or the environment, are acceptable. The article, therefore, does not establish that the position proffered here requires at least a bachelor's degree in a specific specialty, or its equivalent, as the normal minimum requirement for entry into the occupation.

The record lacks sufficient evidence to support a finding that the duties and requirements of the position, as described, is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

Upon review of the totality of the record, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

#### 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 upon 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.

When determining whether there is such a common degree requirement, factors often considered by USCIS include: 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 attest 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)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative sources) reports an industry-wide 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.

We have reviewed the advertisements the Petitioner submitted both in response to the RFE and on appeal to establish that its requirements to perform the proffered position are an industry standard. However, for the Petitioner to establish that an advertising organization is similar, it must demonstrate that the Petitioner and the organization share the same general characteristics. Without such evidence, postings submitted by a Petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner. When determining whether the Petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered).

We note that the Petitioner did not provide any independent evidence of how representative the job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the employer's actual hiring practices. Upon review of the documents, we find that they do not establish that a requirement for a bachelor's degree, in a specific specialty, is common to the Petitioner's industry in similar organizations for parallel positions to the proffered position.

Specifically, we note that almost all of the postings require a minimum of two years of experience in the industry, with several requiring a minimum of three years to five years of experience. Notably,

the posting by [REDACTED] requires at least “5-8 years’ experience in business/marketing analytics function.” The positions identified in many of the submitted postings, therefore, appear to be higher-level positions than the position proffered in this matter, which is an entry-level position by virtue of its Level I wage level designation.

Additionally, we note that many of the postings are for different positions than that of an operations research analyst. For example, the posting from [REDACTED] solicits a market research analyst, whereas the posting by [REDACTED] is for a manager of statistical analysis. Moreover, nearly all of the postings either state a general requirement for a bachelor’s degree without specialization, or provide a list of numerous disparate fields that would be acceptable for entry into the position. The advertisements, therefore, do not offer a consensus on the type of degree that is required

The job advertisements do not establish that similar organizations to the Petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions in the Petitioner’s industry.<sup>5</sup> As the record does not establish that a “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, the Petitioner has not satisfied the first alternative 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.

The Petitioner stated that the proffered position simply requires a bachelor’s degree in any field. In response to the RFE, the Petitioner emphasized that the Beneficiary’s bachelor’s degree in foreign languages and linguistics, and his master of business administration degree, qualify him for the position. While the completion of these courses may be beneficial, or even essential, in performing certain duties of an operations research analyst position, the Petitioner has not demonstrated how an established curriculum of such 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. In fact, the duties as described by the Petitioner, which include tasks such as “research and audit online presence,” “serve as liaison for offices and online reviewers,” and “execute established best practices” do not appear to be so complex or unique such that a degree in languages, linguistics, business, or other specific specialty would be necessary to perform them.

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<sup>5</sup> As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. Again, the LCA indicates that, relative to other positions located within the “Operations Research Analysts” occupational category, the Beneficiary would perform only routine tasks that require limited, if any, exercise of judgment; his work would be closely supervised, monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. Without further evidence, the evidence does not demonstrate that the proffered position is so complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position.<sup>6</sup> 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.”

The Petitioner claims that the Beneficiary is well-qualified for the position, and repeatedly references his formal education and experience as evidence that the proffered position is a specialty occupation. 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. Here, the Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Thus, it cannot be concluded that the Petitioner has 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 Petitioner stated in the H-1B petition that it was established in 2005 and has more than 4,000 employees. Upon review of the record, we find that the Petitioner did not submit information regarding employees who currently or previously held the particular position being offered here. The Petitioner submitted copies of resumes and diplomas for a number of individuals, asserting that these documents show that other individuals employed by the Petitioner in the same or similar positions possess at least a bachelor’s degree. There is no evidence, however, to confirm that any of these individuals are currently or were previously employed by the Petitioner, nor does the Petitioner

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<sup>6</sup> The issue here is that the Petitioner’s designation of this position as a Level I position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), such a 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 consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.



clarify what positions these individuals held within the company. Further, the individuals for whom credentials were submitted appear to possess a wide array of degrees in various fields.

While a petitioner may assert that a proffered position requires a degree in a specific specialty, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a 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 employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree, or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the Petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The record, therefore, does not establish that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

#### 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.

The Petitioner asserts that the job duties of the proffered position are specialized and complex. We refer to our earlier comments and findings with regard to the implication of the Petitioner's designation of the proffered position in the LCA as a Level I wage, and hence one not likely distinguishable by relatively specialized and complex duties. We have also reviewed the Petitioner's description of duties. While we understand that the Beneficiary must have some technical knowledge in order to perform these duties, the Petitioner has not sufficiently explained how these duties require the theoretical and practical application of a body of highly specialized knowledge, and the 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 Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

#### IV. CONCLUSION

The Petitioner has not established that the proffered position is a specialty occupation.

*Matter of P-D-S-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of P-D-S-*, ID# 283927 (AAO Mar. 31, 2017)