



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

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

MATTER OF W-&A- PC

DATE: MAY 12, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a law firm, seeks to temporarily employ the Beneficiary as a "real estate 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 California Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary is exempt from the H-1B numerical limitation (cap) for the fiscal year in which the petition was filed.¹ The matter is now before us on appeal.

The Petitioner asserts that the Beneficiary, who is currently abroad, was previously counted against the cap and may reclaim the remaining portion of the six years of H-1B status.

Upon review, we find that the Beneficiary is cap exempt and may reclaim the remaining portion of the maximum six years allowable in H-1B status. However, as will be discussed, the record does not establish that the proffered position requires a baccalaureate or higher degree in a specific specialty or its equivalent. Accordingly, we withdraw the Director's decision and remand the matter to the Director for further development of the record and a new decision.

I. RECAPTURING REMAINING H-1B TIME

The issue in this matter is whether the Petitioner may recapture the Beneficiary's remaining H-1B time. The Petitioner contends that a U.S. Citizenship and Immigration Services memorandum allows the Beneficiary to recapture his remaining H-1B time more than six years beyond the start of the validity period of the prior H-1B petition.² We agree with the Petitioner that the Aytes Memo

¹ The Director found that the Beneficiary was not previously admitted in H-1B status. However, evidence in the record demonstrates that the Beneficiary was indeed admitted to the United States in H-1B status pursuant to a previous H-1B petition.

² *See* USCIS Interoffice Memorandum, Guidance on Determining Periods of Admission for Aliens Previously in H-4 or

allows the Beneficiary to recapture unused H-1B time outside of the initial six year validity period. As such, we will withdraw the Director's decision with respect to this issue.

II. SPECIALTY OCCUPATION

Although not addressed in the Director's decision, the record as presently constituted does not establish that the proffered position qualifies for classification as a specialty occupation.

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" 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*,

L-2 Status; Aliens Applying for Additional Periods of Admission Beyond the H-1B Six Year Maximum; and Aliens Who Have Not Exhausted the Six-Year Maximum But Who Have Been Absent from the United States for Over One Year (Dec. 5, 2006), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/periodsofadm120506.pdf (Aytes Memo).

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 387 (5th Cir. 2000).

With respect to the proffered position’s job requirements, the Petitioner states that a bachelor’s degree in finance or business is required, and that a master of business administration degree is strongly preferred. See Annexure “A” to the employment agreement entered into between the Petitioner and the Beneficiary. The requirement of a bachelor’s degree in business, however, is inadequate to establish that a 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. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, 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). In addition to demonstrating that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor’s or higher degree in a specialized field of study or its equivalent. As explained above, we interpret 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. We have consistently stated that, although a general-purpose bachelor’s degree, such as a degree in business, 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*, 484 F.3d at 147.

Although the Petitioner has provided a lengthy narrative describing the duties of the proffered position and stated that the duties require specific courses, the Petitioner’s acceptance of a bachelor’s degree in business suggests that the position is not a specialty occupation. Therefore, we will remand this matter to the Director to determine whether the proffered position qualifies as a specialty occupation.³

III. CONCLUSION

The Director’s decision will be withdrawn and the matter remanded to the Director. However, the evidence of record does not establish eligibility for the benefit sought; therefore, this matter is remanded to the Director for further action and entry of a new decision.

³ We further note that the evidence of record does not establish that the Beneficiary’s U.S. bachelor’s degree in business administration, with a concentration in management information systems, is directly related to the duties of the proffered position. Although the Beneficiary also obtained a master of business administration degree from a foreign university, the record does not include an evaluation of that degree.

Matter of W-&A- PC

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 W-&A- PC*, ID# 232554 (AAO May 12, 2017)