



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

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

MATTER OF P-I-, INC.

DATE: MAY 24, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software services and consulting company, seeks to temporarily employ the Beneficiary as a “QA engineer” 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. The Director concluded that the record does not demonstrate, as required, that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner submits a brief and copies of previously submitted evidence.

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).

As recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

II. PROFFERED POSITION

On the H-1B petition and supporting documentation, the Petitioner, which is located in Texas, indicated that the Beneficiary would work off-site for the end-client located in [REDACTED] Illinois. The Petitioner listed the Beneficiary’s job duties in his capacity of QA engineer as follows:

- Participate in requirement analysis discussions and validating backlogs, stories, mockups and other specifications for appropriateness.
- Devise test strategies and test scripts along with the offshore quality assurance team
- Testing applications on a regular basis, filing defects and presenting test reports after consolidation.
- Validating the feature/backlog traceability matrix
- Participating in Bug triage meetings for defect and issue resolution
- Ensuring that defects are closed appropriately and releases are smooth

- Understanding application functionality and business ability to adapt to changing priorities and projects

The Petitioner submitted a letter from the end-client verifying the Beneficiary's assignment as a QA engineer at its premises in Illinois. The letter further stated that, "[e]ssentially," the Beneficiary's job duties are to "test the deliverables to ensure quality and performance of the applications" and to "manage the environments needed for the applications and ensure smooth deployment of the applications on all relevant environments."

In response to the Director's request for evidence, the Petitioner stated that it "provides [redacted] and solutions to companies like [the end-client] . . . and other [redacted] companies." In a separate letter entitled "Detailed job description," the Petitioner listed the proffered job duties as follows:

- Participate in scrum meetings to provide input on functional requirements, QA defects, schedules, or potential problems.
- Identify scenarios which needs to be automated and make framework more robust and scalable
- Developed BDD tests using Cucumber by writing behaviors and step definitions.
- Develop selenium automation scripts against specification
- Debug automation test script failures
- Coordinate with offshore team on testing, defects & automation status
- Testing web services and API calls
- Prepare weekly status report by collecting, analyzing the information including corrective actions and re-validations
- Identify quality problems and recommend solutions
- Interpret test results and compare them to established specifications
- Manages the process and takes care of environment issues
- Conduct test case reviews and present the test cases/test scenarios to the team members for all iterations.
- Attend Review meetings and walkthroughs and interact to Business Analysts and Developers for defects solving
- Provide weekly project report that includes testing metrics and status reports

According to the Petitioner, the proffered position "is a specialty occupation that always requires a minimum of a bachelor's degree."

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

Specifically, the record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

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)³ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Occupations, All Other," corresponding to the Standard Occupational Classification (SOC) code 15-1199, at a Level I wage rate.⁴ The Petitioner did not specify which occupational sub-category under "Computer Occupations, All Other" best fits the proffered position.

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. However, there are some occupations for which occupational profiles have not been developed, such as for the occupational category "Computer Occupations, All Other."⁵ Therefore, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria.

The Petitioner submitted and relied heavily on an evaluation from [REDACTED] an associate professor in the [REDACTED] department at [REDACTED]

² 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.

³ The Petitioner is required to submit a certified LCA 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).

⁴ We will consider the Petitioner's selection of the Level I wage level (the lowest of four assignable wage levels). The "Prevailing Wage Determination Policy Guidance" issued by the Department of Labor (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 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.*

⁵ See Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Employment Statistics: Occupational Employment and Wages, May 2016 Computer Occupations, All Other*, <https://www.bls.gov/oes/current/oes151199.htm>.

██████████ This evaluation concludes that the proffered position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

We find that this evaluation is insufficient to demonstrate eligibility under this (or any other) criterion.⁶ Foremost, we find that the evaluation does not demonstrate an adequate understanding of the position proffered here. For example, while ██████████ concludes that the proffered position is a specialty occupation requiring at least a bachelor's degree in a computer related field, the end-client here does not make such a statement. The letter from the end-client is silent as to the proffered position's minimum educational requirements.⁷ As recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. ██████████ evaluation does not indicate whether he consulted with the end-client to assess its requirements for the proffered position, visited its business, observed similar employees at its worksite, or interviewed them about the nature of their work and the knowledge that they apply on the job, for example, in order to support his conclusions about the end-client's requirements.

██████████ states that he based his evaluation of the proffered position solely on "a detailed end-client letter from [the end-client] and supplemental detailed job description." But the job descriptions contained in the end-client's letter and the "supplemental detailed job description" are far from detailed. The end-client's letter states only that the Beneficiary would "test the deliverables to ensure quality and performance of the applications" and "manage the environments needed for the applications and ensure smooth deployment of the applications on all relevant environments." The end-client's letter does not provide additional, relevant details such as what "applications" or "environments" are involved, and what exactly the Beneficiary would do to "manage" them. Likewise, the "supplemental detailed job description" lists one of the proffered duties as "[m]anages the process and takes care of environment issues." It does not further explain such aspects as what "process" or "environment issues" are involved, and what exactly the Beneficiary would do to "manage" and "take care" of them.

⁶ This evaluation also addresses several other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). We will address those aspects of the evaluation separately.

⁷ The Petitioner only stated that it requires at least "a bachelor's degree" for the proffered position, and has not specified any fields of study from where the bachelor's degree must come from. If the end-client were also to require only a general bachelor's degree, then this alone would be sufficient reason to find that the proffered position does not qualify 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 general degree, without further specification, does not establish the position as a specialty occupation. See *Royal Siam*, 484 F.3d at 147 (a requirement for a general-purpose bachelor's degree, without more, will not justify a finding that a particular position qualifies for classification 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.").

To the extent that the above-stated job duties suggest that the Beneficiary would perform managerial-level duties, it is not apparent how such job duties would be consistent with the Petitioner's selection of a Level I wage rate on the LCA. The Level I wage rate denotes that this position is a relatively low, entry-level position compared to others within the occupational category.⁸ Without further information such as who or what the Beneficiary would be managing and the type of applications involved, we find that the job descriptions upon which [REDACTED] based his evaluation to be insufficiently detailed to convey the substantive nature of the work the Beneficiary would perform.

Consequently, we find that [REDACTED] evaluation (which did not reference or acknowledge the position's Level I wage rate) does not demonstrate a sound factual basis for his conclusions about the duties of the proffered position and its educational requirements. Thus, 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 casts its gaze 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.

Under this prong of the criterion, the Petitioner again relied on [REDACTED] evaluation which asserted a general industry educational standard for similar positions. However, we find this evaluation does not sufficiently establish [REDACTED] expertise on the practices of similar organizations within the industry seeking to hire QA engineers.

[REDACTED] indicates that his knowledge of the industry is based on his "personal background, educationally and professionally, in the fields of computer science and software technology," and referenced both his current position at [REDACTED] and prior work experience as a "professional consultant and software developer for numerous companies." Yet his supporting documentation (including his curriculum vitae) reveals that his most recent professional consulting experience was

⁸ 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.

in 1998. Since then his work experience has been limited to an academic setting as an associate professor in the [REDACTED] department. [REDACTED] does not cite to or reference any particular statistics, studies, surveys, publications, or other sources of empirical information which he may have consulted to complete his evaluation. There is no indication that he conducted research or studies pertinent to the educational requirements for such positions within similar organizations in the Petitioner's industry. Without further clarification, it is unclear how his education, training, skills, or experience would translate to expertise regarding relevant industry practices.

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 record does not sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. To begin with and as discussed previously, the end-client itself does not state that it requires at least a baccalaureate degree in a specific specialty, or its equivalent. In addition, the record does not credibly demonstrate exactly what the Beneficiary would do on a daily basis such that complexity or uniqueness could even be determined.

Here, the Petitioner has not explained in detail the software systems, applications, and environments the Beneficiary would service. In fact, the record does not identify any particular project or projects the Beneficiary would be assigned to for the end-client. Instead, the Petitioner vaguely stated that it "provides [REDACTED] and solutions to companies like [the end-client] . . . and other [REDACTED] companies," and submitted the Petitioner's company brochure, corporate overview, and website screenshots. The Petitioner asserted that these documents demonstrate the "complexities involved in the Petitioner's business." While the submitted documentation identifies the end-client as one of the Petitioner's major clients and provides general information about the Petitioner's services and offerings, this documentation is not specific to the Beneficiary or the proffered position. General statements and evidence about the Petitioner's services and offerings as a whole, which are not specifically related to the Beneficiary, are insufficient to demonstrate the claimed complexity or uniqueness of this particular position.⁹

[REDACTED] similarly highlights the "complexity" of the proffered position. In particular, he states that the position's high level of complexity is required to "reasonably perform the duties of Quality Assurance Engineer, particularly on behalf of a complex technology infrastructure such as that of

⁹ We observe that the Petitioner has not submitted any statements of work to accompany the master services agreement between it and the end-client.

[the end-client].” He further mentions “the [end-client’s] extraordinarily complex business software infrastructure” and the “highly complex, large-scale software applications and enterprise financial systems that are used by large financial institutions such as [the end-client].”¹⁰ But it is not evident what the factual basis was for his statements about the proffered position. Again, neither the Petitioner nor the end-client has specifically identified the particular software applications, systems, software infrastructure, or project the Beneficiary would actually be servicing.

Furthermore, the position’s claimed “complexity” is undermined by the Petitioner’s selection of a Level I, entry-level, wage rate. This wage rate, as noted previously, is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a *basic* understanding of the occupation compared to others within the occupation.¹¹ The Level I wage rate does not appear consistent with [redacted] descriptions of the “advanced” and “demanding technical nature” of the position’s duties. Accordingly, we find [redacted] evaluation insufficient to demonstrate the claimed “complexity” (or uniqueness) of this particular position, too.

In the appeal brief, the Petitioner references the Beneficiary’s qualification for the position. 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. On the H-1B petition, the Petitioner described itself as a 265-employee company established in 2005. In its company brochure, the Petitioner further indicated that it employs “the largest pool of [redacted] engineers with over 3,600 engineers across offices in the US, India, Indonesia, and the Netherlands.” Out of these numerous employees, the Petitioner stated that, besides the Beneficiary, only “two others are occupied as a QA engineer.”

¹⁰ The end-client is not a “large financial institution” as suggested by [redacted] but is a large drugstore chain.

¹¹ The Petitioner’s designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex (or unique or specialized) 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.

The Petitioner submitted these two individuals' pay statements as evidence of their employment. However, these pay statements do not demonstrate what job duties they perform, which end-client they service, or other relevant details of their employment capacity. The Petitioner also submitted one individual's U.S. master's degree in industrial and systems engineering. But the Petitioner did not submit evidence of the other individual's degree. The Petitioner therefore has not sufficiently demonstrated its normal employment practices for this particular position, pursuant to 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.

For the same reasons we discussed under the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), we find that 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). We incorporate our earlier discussion and analysis on this matter, including the deficiencies of Dr. Bellehsen's evaluation.

We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.* In our exercise of discretion, we find [REDACTED] evaluation insufficient to establish the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), or any other criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

IV. CONCLUSION

The record does not demonstrate that the proffered position qualifies as a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of P-I, Inc.*, ID# 371967 (AAO May 24, 2017)