



**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 “java developer” 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 sufficient work for the requested period of intended employment, and thus, that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner submits a brief and additional evidence. The Petitioner asserts that the record is sufficient to demonstrate a genuine job opportunity of H-1B caliber for the Beneficiary.

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] Delaware. The Petitioner requested a validity period from October 2016 through August 2019. In response to the Director’s request for evidence, the Petitioner stated that the Beneficiary “will work out of the [end-client’s] [REDACTED] location until 05/30/2017.”

According to the Petitioner, the Beneficiary’s job duties would be as follows:

- Develop and write high quality coding that meets customer requirements.
- Create software documentation and update existing documentation.
- To be involved in discussion with business stakeholders to understand the existing website and applications of customer.

- Develop unit tests to validate the code that have been developed works as expected.
- Debug, fix defects and respond to bug reports.
- Ensure compliance with the documented software processes and procedures throughout the life cycle of software products
- Discuss business and technical requirements for developing projects which will serve as proof of concept or proof of technology.
- Develop the modules/components according to the requirement,
- Participate and device non-functional requirement such as performance, throughout by coordinating with business and technical stakeholders.

Also 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 That is, the Petitioner has not established that, at the time of filing, it has secured definite, non-speculative specialty occupation work for the Beneficiary for the entire validity period requested.²

In this matter, the Petitioner asserts that the Beneficiary would only work for the end-client in [REDACTED] Delaware as a java developer. As specific evidence of the Beneficiary’s assignment, the Petitioner submitted, *inter alia*: (1) a master agreement between the Petitioner and the end-client; (2) amendment #5 to the master agreement (amendment 5) which is valid until April

¹ 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.

² Speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor’s degree. See section 214(i) of the Immigration and Nationality Act (the “Act”). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,419-20 (proposed June 4, 1998) (to be codified at 8 C.F.R. pt. 214).

2017; (3) amendment #6 to the master agreement (amendment 6) which is valid until July 2017; and (4) a schedule to the master agreement which is valid until May 2017.

The documents do not sufficiently demonstrate that the Petitioner has secured non-speculative specialty occupation work for the Beneficiary. For example, while the Petitioner asserts that the Beneficiary will be employed in Delaware, the chart in amendment 5 does not list any positions located in Delaware. The Petitioner has not explained how this document relates to the proffered position.

The chart in amendment 6 confirms the assignment of six java developer positions (among other positions) located in New York or Delaware, but does not specifically identify the Beneficiary by name. Moreover, it shows the end date for these positions as July 2017. Similarly, the schedule to the master agreement confirms the assignment of five unidentified java developers in Ohio or Delaware, but only until May 2017. In comparison, the Petitioner is requesting to employ the Beneficiary in the same capacity until 2019.

On appeal, the Petitioner acknowledges that it “is unable to provide documentation demonstrating that this project will last until the employment end date since [the end-client] and Petitioner have had a practice where Petitioner obtains short term approvals.” The Petitioner then states that “[t]here is no reason as to why the practice of obtaining these short term approvals will not continue in the future” and submits an older amendment and schedule to the same master agreement as “examples of the short term project approvals Petitioner obtains with [the end-client].”

But it appears that each amendment and schedule materially changed the allocation of resources to the end-client. For instance, amendment 5 (worth approximately \$20 million) required 64 total personnel spread out in four States, whereas amendment 6 (worth approximately \$5 million) required 21 total personnel in three States. Amendment 6 is valid until July 2017, whereas the schedule is valid until May 2017. The same schedule is for five java developer positions in Ohio or Delaware, whereas the older schedule was for 62 different positions located in Ohio, California, New Jersey, and offshore. Ultimately, while the Petitioner may have a practice of obtaining short term approvals with the end-client, these approvals come in the form of amendments and schedules that do not sufficiently show the likelihood that the Beneficiary’s assignment would be extended in the same capacity until 2019.³

Moreover, the amendment and schedule only list the proffered job title; they do not provide additional, detailed information about the actual job duties to be performed. Nor does the end-client’s letter, which merely identifies the Beneficiary as a “consultant” who would “provide IT consulting services” at an unspecified work site, provide additional information about the actual job

³ On appeal, the Petitioner states that “if Beneficiary was to be removed from the [end-client] project after its expiration, Petitioner has a long standing working relationship with [other] companies . . . [and] can thus provide Beneficiary H-1B level work continuously throughout his approved petition.” This statement further illustrates the undefined nature of the Beneficiary’s proposed employment.

duties. Thus, while the Petitioner provided a description of the proffered job duties, there is insufficient evidence directly from the end-client corroborating that description. As noted above, where the work is to be performed for entities other than the Petitioner, evidence of the client companies' job requirements is critical. *See Defensor*, 201 F.3d at 387-88. The record is missing this critical evidence.

Accordingly, we find the record insufficient to demonstrate that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

As the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies for classification as a specialty occupation. Notably, in this matter the Petitioner has not explained which of the above criterion it believes the proffered position qualifies under, and why.

We are also precluded from finding that the proffered position qualifies as a specialty occupation by virtue of the position's minimum educational requirement. The record is missing critical evidence from the end-client regarding the proffered position's minimum educational requirement as well. The various amendments and the end-client's letter are all silent as to the position's educational requirement.

The schedule which the Petitioner claims authorizes the Beneficiary's assignment lists the required "role/skillset" of the "application developer" position as follows:

- Applications development experience
- Experience with Agile or other Iterative Development software practices
- Expert Level Java, Strong understanding of fundamental web/internet technologies
- Test Driven Development, Web Service Development, Agile Feature Driven Development Methodology
- Must speak, read and write fluently in English

In the older schedule submitted as an "example" of prior agreements with the end-client, the "role/skillset" of the "Java Application Developer" position is listed as follows:

- Java/J2EE development experience.
- Must speak, read and write fluently in English

- Technical Writing
- Experience with Agile or other Iterative Development software practices.

That same schedule lists the “role/skillset” of the “JavaScript Application Developer” position as follows:

- Javascript development and experience in MVC frameworks
- Must speak, read and write fluently in English
- Technical Writing
- Experience with Agile or other Iterative Development software practices.

None of these schedules contain information indicating that the end-client requires at least a bachelor’s degree in a specific specialty, or the equivalent, for this particular position. *See Defensor*, 201 F.3d at 387-88 (requiring sufficiently detailed evidence of the end-client’s job requirements). For all of these reasons, we cannot find that the proffered position qualifies as a specialty occupation based on the end-client’s own requirements.⁴

IV. CONCLUSION

The Petitioner has not established that it has secured work for the Beneficiary for the entire validity period requested, and that such work qualifies as a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of P-I-, Inc.*, ID# 394294 (AAO May 24, 2017)

⁴ The Petitioner stated that the position requires “a bachelor’s degree.” If the end-client were to share the Petitioner’s educational requirement of an otherwise unspecified bachelor’s degree, 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.”).