



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

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

MATTER OF E-A-, INC

DATE: OCT. 2, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology provider, seeks to temporarily employ the Beneficiary as a “programmer 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 had not demonstrated that 1) the proffered position qualifies as a specialty occupation, and 2) it has sufficient specialty occupation work for the entire validity period requested.

On appeal, the Petitioner asserts that the Director erred in her decision.

Upon *de novo* review, we will dismiss the appeal.<sup>1</sup>

## I. SPECIALTY OCCUPATION

### A. 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

---

<sup>1</sup> We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

- (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).

#### B. Proffered Position

The Petitioner stated that the proffered position is a programmer analyst position, and that the Beneficiary would work in-house on a wide variety of IT projects for clients around the country. According to the Petitioner, the incumbent for the proffered position “must possess at least a Bachelor’s Degree in Computer Science, Engineering, Information Technology, Mathematics, or Science, Business, or this related technical field in addition to relevant work experience.”

#### C. 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. Specifically, the record does not (1) describe the position’s duties with sufficient detail; and (2)

establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

As a preliminary matter, the Petitioner's claim that a bachelor's degree in business 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. 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).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed, we interpret the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. 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 Corp.*, 484 F.3d at 147.<sup>3</sup>

Again, the Petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business. Without more, this assertion alone indicates that the proffered position is not in fact a specialty occupation.

Upon further review of the record, we find that insufficient documentation exists to establish the Beneficiary's specific job duties and responsibilities. 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 INS had reasonably

---

<sup>2</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.

<sup>3</sup> Specifically, the judge explained in *Royal Siam Corp.*, 484 F.3d at 147, that:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

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.

According to the Petitioner, the Beneficiary will work as a programmer analyst on [REDACTED] projects for its clients, [REDACTED] and the [REDACTED]. Therefore, it is the end-client's information regarding such aspects of the proffered position as the job description and minimum education requirement that controls in this situation. *See id.* Although the Petitioner submitted formal documentation from [REDACTED] and [REDACTED] which we will discuss in further detail below, this documentation was neither current nor specific to the Beneficiary. The Director explained the need for documentation from the ultimate end-user(s) of the Beneficiary's services in her decision, but the Petitioner did not address this issue on appeal or provide the necessary information from the end-clients. Without reliable, official documentation directly from the end-clients that provides pertinent information such as the Beneficiary's duties and responsibilities and the minimum education requirements, we cannot determine the substantive nature of the proffered position.<sup>4</sup>

Additionally, in response to the Director's request for evidence, the Petitioner claimed that the Beneficiary would work as part of its in-house development team known as "[REDACTED]". According to the Petitioner, [REDACTED] "is presently working on several projects," and the Beneficiary would be "contributing to the project for [REDACTED]". This statement contradicts the Petitioner's claim that the Beneficiary would be working on projects for [REDACTED] and [REDACTED] and leads us to further question the identity of the ultimate end-user of the Beneficiary's services.

The Petitioner provided no evidence, such as a contract or Statement of Work (SOW), to support the assertion that the Beneficiary would be working on a project for [REDACTED] and provided insufficient documentation to demonstrate that he would be working on projects for [REDACTED] and [REDACTED]. In sum, aside from the Petitioner's own annotated list of duties for the proffered position, nothing in the record adequately conveys the exact project upon which the Beneficiary will work, the requirements of that project, or the substantive nature of the work that he will perform for the entire requested period of employment.

We are therefore precluded from finding that the proffered position satisfies any of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1)

---

<sup>4</sup> The Petitioner stated that it is "unable to provide employee-specific statements of work and/or letters," noting that its clients have "delegated the projects to the Petitioner for the purpose of convenience as well as its technical expertise." It concluded by stating that its clients have "little knowledge of the specific employees providing services or the nature of their work."

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.

Accordingly, we cannot find that the proffered position qualifies for classification as a specialty occupation.

## II. SPECULATIVE EMPLOYMENT

The period of employment requested in the instant H-1B petition is from March 29, 2017, until August 4, 2019. The evidence provided is insufficient to demonstrate that the Petitioner would have sufficient work for the Beneficiary for the entire period of requested employment.

Again, we note that the Petitioner has not submitted any documents from either [REDACTED] or [REDACTED] to indicate that the Beneficiary will be working on their projects. Further, none of the SOWs provide rates or roles for a programmer analyst, the Beneficiary's proffered position.

However, even if we assume that the Beneficiary will be assigned to projects for [REDACTED] and [REDACTED] the record does not establish availability of work for the entire period of requested employment. According to the "Pricing Section" of the SOW for [REDACTED]<sup>5</sup> it appears that the project is scheduled to be completed by June 23, 2017. Further, contrary to the Petitioner's claim that the "Master Consulting Agreement" (MCA) "will automatically renew in one-year increments unless either party explicitly terminates the agreement," it will only "automatically renew for one (1) period of twelve (12) months."<sup>6</sup> In other words, the MCA, at best, is only valid for a total of two years, or until August 9, 2018. According to the [REDACTED] "Hosting and Managed" SOW<sup>7</sup>, the "Pricing Terms" indicate that "pricing is based on a three year service term and contract." However, the Petitioner did not submit a copy of any contract. Regardless, even if we were to assume that the Petitioner has a three-year contract, the SOW was signed on January 5, 2016, and would presumably end on January 5, 2019, approximately seven months prior to the requested end date.

While we agree that the Petitioner has demonstrated a past relationship with both [REDACTED] and [REDACTED] without additional evidence, the Petitioner has not sufficiently established that it will have work for the Beneficiary until August 4, 2019, with its unsupported testimony alone. Further, the record does

---

<sup>5</sup> We note that the SOW is missing pages 27-66.

<sup>6</sup> Although the commencement date of the agreement was not completed, we will assume that the agreement began on the date the client signed it, August 9, 2016.

<sup>7</sup> Although the Petitioner indicated in its initial filing that it submitted an MCA for [REDACTED] the document provided was an SOW.

not contain sufficient evidence to demonstrate that the Petitioner will have work for the Beneficiary to perform for any other clients. Although we recall the Petitioner's assertion that the Beneficiary would be working on a project for [REDACTED] as a member of the Petitioner's internal [REDACTED] team, no documentation to support this assertion was submitted, and no further mention of this project was made in the record of proceedings.

The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner or the Beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978). As such, eligibility for the benefit sought must be assessed and weighed based on the facts as they existed at the time the instant petition was filed and not based on what were merely speculative facts not then in existence.

The agency made clear long ago that 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). While a petitioner is certainly permitted to petition for H-1B classification on the basis of facts not in existence at the time the instant petition was filed, it must nonetheless file a new petition to have these facts considered in any eligibility determination requested, as the agency may not consider them in this proceeding pursuant to the law and legal precedent cited, *supra*.

For these reasons, without supporting documentary evidence that the Petitioner has specific H-1B level projects for the Beneficiary until August 4, 2019, the Petitioner's assertions are insufficient to establish the availability of work for the period requested.

### III. CONCLUSION

The Petitioner has not established (1) that the proffered position qualifies as a specialty occupation and (2) that it has sufficient specialty work for the entire validity period requested.

**ORDER:** The appeal is dismissed.

Cite as *Matter of E-A-, Inc*, ID# 746757 (AAO Oct. 2, 2017)