



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

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

MATTER OF S-D-S-, INC.

DATE: OCT. 12, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer consulting firm, seeks to temporarily employ the Beneficiary as a “data storage project 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, concluding that: (1) the Petitioner did not sufficiently establish that it qualifies as a United States employer with an employer-employee relationship with the Beneficiary; and (2) the proffered position does not qualify as a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred in the decision. Upon *de novo* review, we will dismiss the appeal.

I. SPECIALTY OCCUPATION

We will first determine whether the record of proceedings establishes that the proffered position qualifies as a 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
- (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 Beneficiary will serve as an in-house “data storage project engineer.” In a letter submitted in response to the request for evidence (RFE), the Petitioner provided the following description of the Beneficiary’s duties:

- Provide Enterprise Storage solutions and service architectures and designs around technologies like Hitachi Data System Unified Compute Platform (HDC UCP), Cisco UCS, VMware like vCenter and vRealize, CMP tools, etc. – **5%**
- Create and maintain services collateral for pre-sale, professional services and partners for Hitachi Storage (VSP) and Unified Computer Solutions (UCP) solutions, including third party integrations from NetApp, TrendMicro, Above Security etc. – **15%**
- Create well defined pre-sales proof of concepts (POCs) offering hosting at customer data centers or outsource data centers - **5%**
- Maintain all assets and project management documents data repositories. – **10%**
- Migrate customers to new technologies covering the following: - **10%**
 - Develop and maintain migration methodologies with procedures and tools to migrate key customer assets to next-generation data center architectures.

- Create and Maintain Data Migration procedures (homogenous) for both File and Content Migration and Block Migration
 - Develop standard operating procedures for heterogeneous data migrations between various storage vendors (EMC, HDS, HP, IBM)
 - Create NAS migration procedures between NetApp NAS and HDS HNAS
- Create and maintain operational run-books for both customer IT and Hitachi Data Systems Managed Cloud Services including: - **5%**
 - Routine storage administration tasks procedures.
 - Document server, network storage (IT infrastructure) configurations and internal procedures.
- Provide consulting services to understand customer business requirements and come up with relevant solutions and services. – **10%**
- Prepare pre-sales and post sales consulting services and methodologies and obtain agreement on service scope and customer deliverables. – **10%**
- Provide pre-sale and post-sale services to direct customers and partners, for solution design, implementation and operations, including field training and evangelize solution at various Partner or HDS hosted events with account teams. – **5%**
- Provide pre-sale Partner support such as: Solution Demonstrations, Solution sizing and design, Solution setup and configuration. – **5%**
- Perform Partner briefings and solution updates, Partner-led customer briefings. – **5%**
- Provide sale and pre-sale support for solutions and services. – **5%**
- Present to technical and non-technical audience globally. – **5%**
- Provide solution level technical support for sales team. – **5%**

According to the Petitioner, the proffered position requires a bachelor's degree in computer science, engineering, or a related field.

C. Analysis

For the reasons set out below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

1. 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

¹ The Petitioner submitted documentation in support of 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 Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

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.³

On the labor condition application (LCA)⁴, the Petitioner designated the proffered position under the occupational category "Computer Systems Analysts" corresponding to the Standard Occupational Classification code 15-1121.⁵ The *Handbook's* subchapter entitled "How to Become a Computer Systems Analyst" states, in pertinent part: "A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming."⁶ The *Handbook* also states: "Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere."⁷

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions. As cited above, the *Handbook* begins by stating that a bachelor's degree in a computer-related field is "not always a requirement."⁸ The *Handbook* continues by stating that there is a wide range of degrees that are acceptable for positions in this occupation, including general-purpose degrees in business and liberal arts.⁹ Also according to the *Handbook*, many computer systems analysts have liberal arts degrees

³ All of our references are to the 2016-2017 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 we regularly review 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.

⁴ The Petitioner is required to submit a certified LCA to us 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).

⁵ The Petitioner classified the proffered position at a Level II wage. We will consider this selection in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. DOL's wage-level guidance specifies that a Level II designation is reserved for positions involving only moderately complex tasks requiring limited judgment. 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.*

⁶ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Computer Systems Analysts (2016-17 ed.).

⁷ *Id.*

⁸ *Id.*

⁹ As discussed above, we interpret the term "degree" to mean a degree *in a specific specialty* that is directly related to the proposed position. Since there must be a close correlation between the required specialized studies and the position, the acceptance of general and wide-ranging degrees (such as business and liberal arts degrees) strongly suggests that a

and have gained programming or technical expertise elsewhere. It further reports that many analysts have technical degrees. But we observe that the *Handbook* does not specify the amount of programming or technical expertise required, or the degree level for these technical degrees (e.g., associate's degrees). Thus, the *Handbook* does not support the claim that the occupational category of "Computer Systems Analysts" is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent.

In the instant matter, the Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

2. 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.

a. First Prong

To satisfy the 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.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: 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 establish 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) (considering these "factors" to inform the commonality of a degree requirement)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports a requirement for at least a bachelor's degree in a specific specialty, or its equivalent. We incorporate by reference the previous discussion on the matter. Furthermore, the Petitioner has not offered evidence from an industry professional

computer systems analyst position is not categorically a specialty occupation. See *Royal Siam Corp.*, 484 F.3d at 147. Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

association, or from firms or individuals in the industry, indicating such a degree is a minimum requirement for entry into the position.

In support of this criterion, the Petitioner submitted a few job announcements placed by other employers. The Petitioner stated that the advertisements are from companies that perform “similar work.” However, we note that some of the job postings do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is a computer consulting company, established in 2013 with one U.S. employee, whereas the postings are from:

- [REDACTED] – a company established in 1968 to provide advanced technological services to the United States government;
- [REDACTED] – a multinational telecommunications company;
- [REDACTED] – the “world’s largest technology company” with more than 1 billion customers;
- [REDACTED] – a company that builds software for the real estate industry
- [REDACTED] – international computer software company; and
- [REDACTED] – a multi-national company.

The Petitioner does not explain how the services provided by these companies are similar to those provided by the Petitioner or how it came to the conclusion that they are in the same industry. When determining whether the Petitioner and the 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). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a basis for such an assertion.

Further, many of the advertisements do not appear to be for parallel positions. For example, the postings require a degree and several years of experience, such as:

- [REDACTED] – 5 to 8 years of experience;
- [REDACTED] – 7 years of experience;
- [REDACTED] – 12 years of experience;
- [REDACTED] – 4 years of experience; and
- [REDACTED] – 5+ years of experience.

More importantly, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, some of the postings do not indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.¹⁰ For instance, the posting for [REDACTED] states that a degree in engineering is needed, but does not specify the degree level (e.g., associate's, vocational degree, baccalaureate). The other postings suggest, at best, that a bachelor's degree is sometimes required for computer systems analyst positions, but a bachelor's degree in a *specific specialty* (or its equivalent) is not¹¹

Without more, the Petitioner has not provided sufficient evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

b. 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.

In support of the petition, the Petitioner provided information regarding the proffered position and its business operations. When discussing H-1B employment, the Petitioner's description must be comprehensive enough to properly ascertain the minimum educational requirements necessary to perform those duties. While a few related skills and techniques may be beneficial in performing certain duties of the 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. The Petitioner's job description lacks sufficient details establishing, for instance, the complexity or uniqueness of the job duties, supervisory duties (if any), independent judgment required, or the amount of supervision received. The Petitioner has not distinguished the proffered position as more complex or unique from other positions that can be performed by persons without such a degree.

¹⁰ As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Further, a *preference* for a degree in a field is not necessarily an indication of a minimum *requirement*.

¹¹ It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

Further, the Petitioner has designated the proffered position as a Level II position on the LCA.¹² This designation, when read in combination with the evidence presented and the *Handbook's* account of the requirements for this occupation, suggests that the particular position is not so complex or unique that the duties can only be performed by an individual with bachelor's degree or higher in a specific specialty, or its equivalent.¹³

The Petitioner claims that the Beneficiary is well-qualified for the position, and references the Beneficiary's 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).

3. 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 record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. *See Defensor*, 201 F.3d at 387-88. If we were limited solely to reviewing the Petitioner's claimed self-imposed requirements, any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement. *Id.* Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

¹² The Petitioner's designation of this position as a Level II position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level II 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 low level position would still require a minimum of an advanced 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.

¹³ The evidence of record does not establish that this position is significantly different from other positions within the occupational category such that it refutes the *Handbook's* information to the effect that some courses are advantageous to obtaining such a position, but not specifying that a bachelor's degree or higher in a specific specialty (or its equivalent) is required.

In response to the RFE, the Petitioner submitted copies of job advertisements it placed for the “same of similar” positions. However, it appears that several of the positions require much more experience than would be required in a Level II wage position. In addition, some posting indicated a requirement of a bachelor’s degree but did not specify a specific specialty. The Petitioner’s job postings indicate the following:

- [REDACTED] – requires 5+ years of experience;
- [REDACTED] – an entry-level position with 0-2 years of experience;
- [REDACTED] – the advertisement does not list a bachelor’s degree in a specific specialty;
- [REDACTED] – the advertisement does not list a bachelor’s degree in a specific specialty, and requires 7 to 10 years of experience;
- [REDACTED] – the advertisement does not list a bachelor’s degree in a specific specialty, and requires 5 to 7 years of experience;
- [REDACTED] – the position requires 8 to 10+ years of experience; and
- [REDACTED] – the advertisement does not list a bachelor’s degree in a specific specialty.

Further, the Petitioner does not explain or document the duties and responsibilities of these positions and how their knowledge compares to the proffered position, nor does it articulate the body of highly specialized knowledge required for these positions. The record lacks evidence establishing that their work has the same or similar substantive responsibilities, duties, and performance requirements as the proffered position

The Petitioner also submitted copies of resumes as evidence that the Petitioner’s employees have a bachelor’s degree.¹⁴ Notably, the Petitioner did not submit the academic credentials of these individuals, e.g. copies of diplomas and transcripts. The Petitioner should note that the evidentiary weight of a resume is insignificant as it represents a claim by an individual, rather than evidence to support that claim. In the instant case, no further documentation was submitted of the individuals’ asserted credentials.

Without more, the Petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor’s degree in a specific specialty, or its equivalent, for the proffered position. Therefore, it has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

¹⁴ As previously noted, the Petitioner stated on the Form I-129 that it only has one employee in the United States; however, the Petitioner submits the resumes of five employees on appeal. In addition, the organizational chart, submitted in response to the RFE, shows seven employees, including the Beneficiary. The Petitioner did not provide an explanation for the inconsistency in its number of employees.

4. 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.

We find that the Petitioner has not sufficiently developed relative specialization and complexity as an aspect of the proffered position. The proposed duties have not been described with enough detail to show that they are more specialized and complex than other computer systems analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner does not establish how the generally described duties elevate the proffered position to a specialty occupation. We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level II position, and not as the higher Level III (referring to "special skills or knowledge") or Level IV (referring to "complex or unusual problems") wage levels. For the reasons discussed above, the evidence of record does not meet 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.¹⁵

II. EMPLOYER-EMPLOYEE RELATIONSHIP

The Director also found that the Petitioner did not establish that it will have a valid employer-employee relationship with the Beneficiary. The Petitioner provided additional evidence on appeal to establish that it will have an employer-employee relationship. However, as it has not established that the proffered position is a specialty occupation, we will not address the employer-employee issue further.

III. CONCLUSION

For the reasons outlined above, the Petitioner has not established eligibility for the benefit sought.

¹⁵ In the appeal, the Petitioner repeatedly references *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012). The record, however, lacks evidence establishing that the facts of the instant petition are analogous to those in *Residential Finance*. Moreover, we agree with the proposition that "[t]he knowledge and not the title of the degree is what is important" as long as a petitioner satisfies all of the statutory and regulatory provisions for a specialty occupation.

Matter of S-D-S-, Inc.

ORDER: The appeal is dismissed.

Cite as *Matter of S-D-S-, Inc.*, ID# 589534 (AAO Oct. 12, 2017)