



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

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

MATTER OF 101A-M-&P- INC.

DATE: OCT. 12, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a grocery merchant, seeks to extend the Beneficiary's temporary employment as a "market research 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 Vermont Service Center denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner did not establish: (1) that the proffered position qualifies as a specialty occupation; and (2) that the Beneficiary properly maintained his nonimmigrant status.<sup>1</sup>

On appeal, the Petitioner asserts that the proffered position qualifies as a specialty occupation, and that the Beneficiary maintained his nonimmigrant status through labor certification applications filed on his behalf.<sup>2</sup>

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

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<sup>1</sup> The Beneficiary's maintenance of his nonimmigrant status is not an issue that falls under our appellate jurisdiction.

<sup>2</sup> Although the Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that it would submit a brief and/or additional evidence within 30 days of filing the appeal, more than four months later we have not received the Petitioner's brief or additional evidence.

- (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 offered 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).

## II. PROFFERED POSITION

Throughout these proceedings, the Petitioner has not provided the duties or requirements for the proffered position. Instead, it merely referenced previous petitions filed on the Beneficiary's behalf and submitted general duties and requirements for “market research analysts” or similar positions from multiple U.S. government websites. As a result, the Petitioner has not established the substantive nature of the work the Beneficiary will perform. Such a shortcoming precludes a finding 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 one; (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 two; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion two; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion three; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion four.

Moreover, throughout the proceedings, the Petitioner did not describe how the proffered position meets any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Nor has the Petitioner addressed any of the specific concerns articulated by the Director in her decision denying the petition. Accordingly, the Petitioner has not established that the proffered position qualifies for classification as a specialty occupation.<sup>3</sup>

The Director also issued adverse determinations regarding the amount of time the Beneficiary held H-1B status, as well as whether he properly maintained his nonimmigrant status. However, these subordinate issues are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the Petitioner has not shown that the proffered position satisfies the regulatory requirements for a specialty occupation. Therefore, we need not and will not address the remaining issues further.

### III. CONCLUSION

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

**ORDER:** The appeal is dismissed.

Cite as *Matter of 101A-M-&P- Inc.*, ID# 648668 (AAO Oct. 12, 2017)

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<sup>3</sup> We further note that the labor condition application (LCA) the Petitioner provided with the petition does not correspond with the information in Part 5 of the petition which instructs the Petitioner to list the "LCA or ETA Case Number." The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act. *See* Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-56) (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]."). Without an LCA that corresponds with the LCA number on the petition, the Petitioner has not demonstrated compliance with section 212(n)(1) of the Act.