



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

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

MATTER OF VSP-F-II, LLC

DATE: OCT. 31, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a real estate investment company, seeks to temporarily employ the Beneficiary as a “training and business development specialist” 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 petition, concluding that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner submits a brief and asserts that the Director erred in her decision.

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).

## II. PROFFERED POSITION

The Petitioner is a three-employee real estate investment trust which seeks to employ the Beneficiary as a “training and business development specialist” at an annual salary of \$39,000. On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Training and Development Specialists” corresponding to the Standard Occupational Classification (SOC) code 13-1151 at a Level I wage.<sup>1</sup>

In its support letter, the Petitioner stated that the Beneficiary “will evaluate business plans and financial projections, develop strong pipeline of new customers and projects in accounts through direct or indirect customer contact, [and] present information using a variety of instructional techniques and formats.” The Petitioner also provided the following list of “major duties and responsibilities” with the company:

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<sup>1</sup> We will consider the Petitioner’s classification of the proffered position at a Level I wage (the lowest of four assignable wage levels) in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by the 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 she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she 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](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.*

- Assess training needs through surveys, interviews with employees or consultation with managers;
- Design, plan, organize, and direct orientation and training programs for employees;
- Prepare manuals and train workers in use of new forms, reports and procedures, according to organizational policy.
- Screen, hire, and assign workers to positions based on qualifications;
- Monitor training costs to ensure budget is not exceeded, and prepare budget reports to justify expenditures;
- Examine budget estimates for completeness, accuracy, and conformance with procedures and regulations.
- Analyze budgeting and accounting reports.
- Conduct analysis of balance sheets, income statements and ratio analysis;
- Produce lead reports and document important customer opportunities;
- Perform evaluation and analysis of current and prospective business customers;
- Create customer computer file and promptly input new client data into data collection systems;
- Participate in projects as needed to accomplish the goals and strategies of the company;
- Provide input into strategic marketing activities for new project and enhancements to existing projects based on client needs.

In response to the Director's request for evidence, the Petitioner added percentages of time for the same job duties above.

According to the Petitioner, the position requires "a combination of Master's degree or higher in Education, Business Administration or closely related field and a minimum of five (5) years of combined professional experience in personnel training and development, business administration and accounting."

### 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. Specifically, the record does not sufficiently demonstrate the substantive nature of the proffered position, and consequently, that its associated job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

As indicated above, on the LCA the Petitioner classified the proffered position under the "Training and Development Specialists" occupational category, corresponding to SOC code 13-1151, at a Level I entry-level wage rate. Some of the proffered job duties, such as "[a]ssess training needs

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<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.

through surveys, interviews with employees or consultation with managers” and “[d]esign, plan, organize, and direct orientation and training programs for employees” are consistent with the job duties for “Training and Development Specialists” as described in the Occupational Information Network (O\*NET) and the U.S. Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)*.<sup>3</sup> In fact, the two job duties cited above are virtually identical to those stated in O\*NET and the *Handbook*. This type of generic description may be appropriate when defining the range of duties that may be performed within an occupational category, but it does not adequately convey the substantive work that the Beneficiary would perform within the Petitioner’s business operations.

The Petitioner has not sufficiently explained what training programs the Beneficiary would provide for its current employees, considering that the Petitioner’s three employees are its general partners. While the Petitioner states that the Beneficiary would provide training to “potential new employees,” this is not sufficient to demonstrate the type of work the Beneficiary would perform as of the date of filing.<sup>4</sup> Moreover, it is not clear what level of training the Petitioner’s “counterparts, agents, and subcontractors” (including architects, general contractors, and real estate agents) would need on the Petitioner’s “proprietary techniques,” and why this training would require someone with at least a master’s degree in education or business administration (or the equivalent), as claimed.

In this vein, the Petitioner’s requirement for at least a master’s degree (plus additional work experience) is not supported by its characterization of the proffered position on the LCA as a Level I “Training and Development Specialists” position. In general, a Level I wage rate indicates that a position is an entry-level position compared to others within the same occupation, and thus would not have educational requirements significantly higher than usual.<sup>5</sup> The Petitioner asserts that “a baccalaureate or higher degree, or its equivalent is normally the minimum requirement for entry into [a training and development specialists] position,”<sup>6</sup> yet does not explain how its own requirement for a *master’s* degree is consistent with the Level I wage rate selected for this position.

Moreover, the majority of the proffered duties are not consistent with the “Training and Development Specialists” occupational category. For example, the Petitioner stated that the Beneficiary would evaluate business plans and financial projections, and would perform a variety of

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<sup>3</sup> O\*NET Details Report for Training and Development Specialists, <https://www.onetonline.org/link/details/13-1151.00> (last visited Oct. 31, 2017); Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Training and Development Specialists (2016-17 ed.). We consider both O\*NET and the *Handbook* to be authoritative sources on the duties of the wide variety of occupations that they address.

<sup>4</sup> A petitioner must establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or 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, 249 (Reg’l Comm’r 1978).

<sup>5</sup> See U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>6</sup> This is not the same as saying that a bachelor’s degree *in a specific specialty*, or its equivalent, is normally required for such positions. As will be explained later, a general degree requirement is insufficient to demonstrate a position as a specialty occupation.

job duties related to budget analysis such as “[e]xamine budget estimates for completeness, accuracy, and conformance with procedures and regulations” and “[a]nalyze budgeting and accounting reports.” These finance and budget related duties are not typically performed by training and development specialists. Notably, the two job duties quoted immediately above are identical to those listed in the O\*NET Details Report for the *different* occupational category of “Budget Analysts,” SOC code 13-2031.<sup>7</sup> Not only is this problematic because, as stated above, generically stated duties are insufficient to convey the substantive work that the Beneficiary would perform, but also because it conflicts with the certified LCA.

For positions involving duties of more than one occupational classification, the LCA should reflect the relevant occupational classification for the highest-paying occupation.<sup>8</sup> As indicated on the certified LCA submitted with this petition, a Level I “Training and Development Specialists” position in the time period and area of intended employment is \$38,854, and the \$39,000 proffered annual salary only marginally exceeds this prevailing wage. In contrast, the prevailing wage for a Level I “Budget Analysts” position in the same time period and area of intended employment is significantly higher, at \$50,482 per year.<sup>9</sup> Thus, the Petitioner should have chosen the higher-paying occupation of “Budget Analysts” on the LCA to incorporate the proffered budget analyst duties. The Petitioner did not do so, and did not submit an explanation why. The incongruities between the job description and the LCA prevent us from understanding the substantive nature of the proffered position.<sup>10</sup>

The Petitioner further indicated that the Beneficiary would perform numerous other job duties related to marketing and developing new business customers. More specifically, the Petitioner stated that the Beneficiary would “develop strong pipeline of new customers and projects.” The Petitioner also listed job duties such as “[p]erform evaluation and analysis of current and prospective business customers,” “[c]reate customer computer file and promptly input new client data into data collection systems,” and “[p]rovide input into strategic marketing activities.” These duties are also not consistent with the duties typically performed by an entry-level training and development specialist, either.<sup>11</sup>

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<sup>7</sup> O\*NET Details Report for Budget Analysts, <https://www.onetonline.org/link/details/13-2031.00> (last visited Oct. 31, 2017).

<sup>8</sup> See U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>9</sup> For more information about prevailing wages, see generally <http://www.flcdatcenter.com/OESWizardStart.aspx> (last visited Oct. 31, 2017).

<sup>10</sup> Otherwise, we would find that the Petitioner did not submit an LCA that supports and corresponds with the petition, as required. See 20 C.F.R. § 655.705(b). We would also find that the Petitioner is not meeting its wage requirements. 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).

<sup>11</sup> We need not determine the appropriate occupational classification or prevailing wages for these marketing and business development related duties, because it is sufficient for us to determine that they are inconsistent with the

In sum, the record reflects numerous job duties and descriptions that are inconsistent, generic, or unsupported by the Petitioner's actual operations. Given these deficiencies, we cannot determine the substantive nature of the work the Beneficiary would actually perform. Accordingly, we are precluded from determining 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 has not demonstrated that the proffered position qualifies for classification as a specialty occupation.

Finally, we also cannot determine that the proffered position qualifies for classification as a specialty occupation based on the Petitioner's own requirements. That is, the Petitioner's claimed entry requirement of at least a master's degree in education or business administration for the proffered position, and additional work experience in a variety of fields like personnel training and development, business administration, and accounting, is inadequate to establish that the proposed position qualifies as a specialty occupation.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree or equivalent degree in seemingly disparate fields, such as education and business administration, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the Petitioner establishes how each field is directly related to each other, or to the duties and responsibilities of the particular position, such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).<sup>12</sup> The Petitioner has not done so here.

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"Training and Development Specialists" occupation.

<sup>12</sup> While the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Therefore, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it appears that the proffered position does not require anything more than a general degree. As explained above, 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. We have consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a determination that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147. For this additional reason, the record does not establish that the proffered position meets the definition of 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 VSP-F-II, LLC*, ID# 635657 (AAO Oct. 31, 2017)