



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

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

MATTER OF A-T-, INC

DATE: OCT. 31, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a computer technology outsourcing and information technology service company, seeks to temporarily employ the Beneficiary as a “business 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 petition, concluding that the Petitioner had not established that the proffered position qualifies as a specialty occupation. On appeal, the Petitioner asserts that the Director erred in her decision.

Upon *de novo* review, we will dismiss the appeal.

I. SPECIALTY OCCUPATION

Upon review of the record in its totality¹ and for the reasons set out below, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the Petitioner has not sufficiently established 1) the substantive nature of the proffered position, 2) that the position requires an educational background, or its equivalent, commensurate with a specialty occupation, and 3) that it has sufficient specialty occupation work available for the entire validity period requested.

¹ While we may not discuss every document submitted, we have reviewed and considered each one.

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. Analysis

First, we conclude that the Petitioner has not sufficiently established the substantive nature of the proffered position. Specifically, the record contains inconsistencies that undermine the Petitioner’s claims regarding the Beneficiary’s position.

For example, the record contains variations regarding the Beneficiary’s job title and duties. The table below summarizes the variances in the Petitioner’s job titles for the proffered position:

Record of Proceedings	Job Title
Form I-129, Petition for Nonimmigrant Worker	Business Analyst
Labor Condition Application (LCA) ²	Business Analyst/Standard Occupational Classification (SOC) code 13-1111, "Management Analysts"
Employment Agreement	Application Architect
██████ project document	Project Manager/Business Analyst
Projected Staffing Needs	Senior Business Analyst/Project Manager/Subject Matter Expert

Further, the Petitioner has not described the nature of the proffered position with clarity. The Petitioner provided multiple job descriptions for the proffered position. In the initial filing, the Petitioner indicated that the Beneficiary would be "a member of the development team for the ██████ market place," "working on project management and doing the right analysis at multiple phases." The Petitioner described the Beneficiary's duties as follows (note: errors in the original text have not been changed):

- Create Business Requirements Gathering sessions in the form of questionnaires and business scenarios with the end-users, subject matter experts (SME) and the developers. Create BRS documents as required.
- Gather user and business requirements through interviews, surveys and prototyping.
- Analyze and prioritized user and business requirements as system requirements that must be included while developing the software
- Plan and define system requirements to Use Case, Use Case Scenario and Use Case Narrative using the UML methodologies.
- Create Use Case Diagrams, Data Flow Diagrams, Activity Diagrams and Sequence Diagrams in MS Visio.
- Create Business Requirements Gathering sessions in the form of questionnaires and business scenarios with the end-users, subject matter experts (SME) and the developers. Gathered user and business requirements through interviews, surveys and prototyping.³
- Conduct JAD sessions with management, SME, vendors, users and other stakeholders for open and pending issues. Implement SOA concepts (search oriented architecture) for the application and implemented search engine based techniques.

² The Petitioner is required to submit a certified LCA to USCIS 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).

³ Notably these duties are the same as the first two duties listed. The Petitioner also repeats some of its job duties in the job description provided in response to the Director's request for evidence (RFE).

- Help prepare Logical Data Models that contain set of diagrams and supporting documents containing the essential business elements, detailed definitions, and descriptions of the relationships between the data elements to analyze and document business data requirements.
- Assist developers to create a platform for compliance reporting tie-out process on a monthly/quarterly basis.
- Regular discussions with developers to make them understand the use cases and function requirements of the client.
- Provide excellent ecommerce applications / websites experience.
- Responsible for supervising work activities (Development, Testing) to ensure that they are well-performed, coordinated among team members and consistent with the approved work plan.
- Coordinate the design phase with the architects in improving the efficiency of the project.
- Work with QA team in identifying test cases/test data and lead the business team for UAT
- Document all custom and system modification. Assign problems to appropriate software development team for fixes. Track problems from start to correction and test.
- Interact with technical team in allowing them to make a better navigational plan for the project flow which would further make a better user interactivity tool for the application.
- Sign off progress and completion reports on a weekly basis.
- Lead planning and/or implementation of projects. Create project management artifacts.
- Participate in the design and/or testing phases.
- Facilitate the definition of project missions, goals, tasks, and resource requirements.
- Resolve or assist in the resolution of conflicts within and between projects or functional areas;
- Develop methods to monitor project or area progress; and provide corrective supervision if necessary.
- Be responsible for assembling the project staff; for their technical or functional development, performance, and/or termination during the project or projects.
- Manage project budget and resource allocation.
- Work with cross-functionality to solve problems and implement changes.
- Follow a defined, agreed upon project management methodology.
- Present oral and written reports defining plans, problems, and resolutions to appropriate levels of management
- Lead aspects of organizational change and identifies opportunities for business process improvements within project scope.
- Provide thorough understanding of project management phases, techniques and tools: Initiate, Prepare (definition/scope/requirements); Execute & Control:

scope, work plans, resources, deliverables, Q/A, transition planning, etc.; Close: completion and assessment.

In response to the Director's RFE, the Petitioner indicated that the Beneficiary would perform the following duties (note: errors in the original text have not been changed):

- Accomplishes information technology staff results by communicating job expectations; planning, monitoring, and appraising job results; coaching, counseling and disciplining employees; initiating, coordinating, and enforcing systems, policies, and procedures.
- Maintains staff by recruiting, selecting, orienting, and training employees; maintaining a safe and secure work environment; developing personal growth opportunities;
- Maintains organization's effectiveness and efficiency by defining, delivering, and supporting strategic plans for implementing information technologies.
- Directs technological research by studying organization goals, strategies, practices, and user projects.
- Completes projects by coordinating resources and timetables with user departments and data center.
- Verifies application results by conducting system audits of technologies implemented.
- Preserves assets by implementing disaster recovery and back-up procedures and information security and control structures.
- Recommends information technology strategies, policies, and procedures by evaluating organization outcomes; identifying problems; evaluating trends; anticipating requirements.
- Accomplishes financial objectives by forecasting requirements; preparing an annual budget; scheduling expenditures; analyzing variances; initiating corrective action.
- Maintains quality service by establishing and enforcing organization standards.
- Maintains professional and technical knowledge by attending educational workshops; reviewing professional publications; establishing personal networks; benchmarking state-of-the-art practices; participating in professional societies.
- Contributes to team effort by accomplishing related results as needed.
- Determines operational objectives by studying business functions; gathering information; evaluating output requirements and formats.
- Designs new computer programs by analyzing requirements; constructing workflow charts and diagrams; studying system capabilities; writing specifications.
- Improves systems by studying current practices; designing modifications.
- Recommends controls by identifying problems; writing improved procedures.
- Defines project requirements by identifying project milestones, phases, and elements; forming project team; establishing project budget.
- Monitors project progress by tracking activity; resolving problems; publishing progress reports; recommending actions.
- Maintains system protocols by writing and updating procedures.

- Provides references for users by writing and maintaining user documentation; providing help desk support training users.
- Maintains user confidence and protects operations by keeping information confidential.
- Prepares technical reports by collecting, analyzing, and summarizing information and trends.
- Maintains professional and technical knowledge by attending educational workshops; reviewing professional publications; establishing personal networks; benchmarking state-of-art practices; participating in professional societies.
- Contributes to team effort by accomplishing related results as needed.

Further, the Petitioner provided the following as the breakdown of the Beneficiary's responsibilities (note: errors in the original text have not been changed):

Responsibilities	% of time
Analyze, review and provide recommendations: Analyze the overall business needs of an organization in order to develop appropriate solutions strategies; Review existing methods of operations; Formulate and define scope and objectives based on both business needs and industry requirements; Analyze existing business procedures and practices; Make recommendations to management and client to introduce more effective methods of operations; and Analyze and finalize information technology solutions and services.	35%
Create Process Specifications, Piloting and Ongoing Review: Develop organization structures and detailed processes specifications for the proposed methods of operations; Pilot and Implement the new processes; Review effectiveness of new processes; Research and keep abreast of latest developments on management tools, models and methodology to devise more efficient methods of operations;	40%
Communication: Interact and work with team of professionals to implement process changes; Interact with clients to identify and pursue new opportunities; Keep each client and senior management informed and abreast of the progress of each project with periodic updates; Mentor junior Analysts; and Work as a appoint of contact on between management project teams.	20%
Miscellaneous: General administration.	5%

As noted, the Petitioner designated the proffered position under the occupational category of "management analysts," corresponding to the Standard Occupational Classification (SOC) code 13-1111. For purposes of the LCA, the Petitioner is required to select the occupational category and

code that best represent the nature of the job offer, which in turn determines the appropriate prevailing wage.⁴ Here, through the certified LCA, the Petitioner represented that the proffered position corresponds to the “management analyst” occupational classification, and that the Beneficiary will be appropriately compensated for performing those duties. However, due to variances in the job description, we are unable to determine if the duties of the proffered position best represents the occupational category “management analysts.”⁵

The Petitioner also classified the proffered position at a Level I wage (the lowest of four assignable wage levels), which appears inconsistent with the provided job duties. Specifically, 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 he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results.⁶ 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.⁷

However, the Petitioner indicates that the Beneficiary would “[be] responsible for supervising work activities,” “sign off progress and completion reports on a weekly basis,” “lead planning and/or implementation of projects,” “manage project budget,” and “lead aspects of organizational change and identifies opportunities for business improvements within project scope.” Contrary to the entry-

⁴ 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.

⁵ We recognize both O*NET and the DOL’s *Occupational Outlook Handbook (Handbook)* as authoritative sources on the duties of the wide variety of occupations that they address. O*NET is accessed online at <https://www.onetonline.org/>. The *Handbook*, which is also available in printed form, may be accessed at <http://www.bls.gov/oco/>. All our references to the *Handbook* are to the 2016-17 edition currently available online.

For example, according to O*NET, “management analysts” “[c]onduct organizational studies and evaluations, design systems and procedures, conduct work simplification and measurement studies, and prepare operations and procedures manuals to assist management in operating more efficiently and effectively. Includes program analysts and management consultants.” The *Handbook* states that “management analysts . . . propose ways to improve an organization’s efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues.” While some of the proposed duties may resemble “management analyst” duties described in O*NET and the *Handbook*, the Petitioner also indicated that the Beneficiary would be “coaching, counseling and disciplining employees” and “maintain staff by recruiting, selecting, orienting and training employees.”

⁶ For more information regarding this occupational category, see <https://www.onetonline.org/link/summary/13-1111.00> (last visited Oct. 31, 2017).

⁷ 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.

⁸ *Id.*

level wage used by the Petitioner, the provided job duties indicate that the position has a high level of responsibility, supervision and independence.⁸

We must also note that, while the Petitioner states that it “has been developing an online [REDACTED]” according to information in the record, including [www.\[REDACTED\]](#) and [REDACTED] it would appear that the [REDACTED] application is offered by [REDACTED] not the Petitioner.⁹ 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. The Petitioner has not submitted sufficient evidence to establish the minimum requirements and job duties of the proffered position or, in the alternative, to establish that [REDACTED] is the Petitioner’s product, and not [REDACTED].

These inconsistencies in the record preclude us from understanding such critical aspects of the proffered position as (1) the actual work that the Beneficiary will perform on a daily basis; (2) the complexity, uniqueness and/or specialization of the tasks; and (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty, or its equivalent.

Accordingly, the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary. We are therefore precluded from finding that the proffered position qualifies as a specialty occupation under 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 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.

Second, the Petitioner has not established that the proffered position requires an educational background, or its equivalent, commensurate with a specialty occupation.

⁸ Without additional probative evidence that the Petitioner provided the most appropriate occupational classification for the proffered position or the wage level, the Petitioner has not established that the petition is supported by an LCA which corresponds with the petition as required at 20 C.F.R. § 655.705(b).

⁹ A review of the [REDACTED] website at [www.\[REDACTED\]](#) also lists a separate address from the Petitioner. The Petitioner has not sufficiently established its relationship with [REDACTED].

The Petitioner's claimed entry requirement of at least a bachelor's degree in "[s]cience, computer science, computer engineering, electronics, engineering, physical sciences or equivalent" for the proffered position, without more, is inadequate to establish that the proposed position qualifies as a specialty occupation. A degree requirement in such general fields¹⁰ as science, engineering, and physical sciences, without further specialization, is not sufficient to establish that the proffered position qualifies as a specialty occupation. 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 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 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. Since there must be a close correlation between the required specialized studies and the position, a generalized degree requirement such as business administration or liberal arts, 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).

The fields of science, physical sciences, and engineering are broad categories that cover numerous and various specialties. Further, such a generalized degree as physical sciences does not establish the position as a specialty occupation without further specification. *Id.* In addition, the Petitioner has not established, for example, that a degree in one of the physical sciences such as chemistry or physics is directly related to the duties and responsibilities of the particular position proffered in this matter. Without more, the Petitioner's stated minimum requirements alone indicate that the proffered position is not in fact a specialty occupation. Further, as stated above, if the work is to be performed for an entity other than the Petitioner, as it appears is the case here, then it is that entity's requirements which would control. *Defensor*, 201 F.3d at 387-88

Third, we find that the Petitioner has not established that it has sufficient specialty occupation work for the Beneficiary for the entire validity period requested.

The Petitioner has repeatedly claimed that the Beneficiary will be assigned to its [REDACTED] project. However, as discussed above, the Petitioner has not established that [REDACTED] is its own project/product. Further, based upon the information submitted, including the product brochure and evidence that the application is available on [REDACTED] and [REDACTED] it would appear that the product has already

¹⁰ A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field, or a bachelor's or higher degree in business administration combined with relevant education, training, or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp.*, 484 F.3d at 147.

been launched. It is, therefore, unclear why the Petitioner continues to require 15 individuals already working on the project, along with 5 additional projected individuals, including the Beneficiary. In addition, the provided job duties do not sufficiently describe the Beneficiary's role in the [REDACTED] project. For these reasons, without additional evidence, the Petitioner has not established that it has sufficient specialty occupation work available for the entire validity period requested.¹¹

II. CONCLUSION

The Petitioner has not established that the proffered position qualifies as specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of A-T-, Inc*, ID# 628807 (AAO Oct. 31, 2017)

¹¹ 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).