



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

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

MATTER OF R-T-, INC

DATE: SEPT. 5, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting firm, seeks to temporarily employ the Beneficiary as a “software developer” 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 did not establish that 1) it has sufficient work for the validity period requested; and 2) the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts that the Director’s decision was in error.

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

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
- (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

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 (1) does not describe the position’s duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

In this matter, the Petitioner indicated that the Beneficiary will be employed in-house as a software developer. However, the Petitioner did not provide sufficient, credible evidence to establish in-house employment for the Beneficiary for the validity of the requested H-1B employment period. Specifically, the Petitioner did not submit a job description that adequately conveys the substantive work to be performed by the Beneficiary. Notably, the description of the duties was largely copied from the occupation “Software Developers, Systems Software” as described in the Department of Labor (DOL)’s Occupational Information Network (O*NET) summary report.² Providing generic

¹ 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.

² Notably, this is a different occupational category than the one designated by the Petitioner in the labor condition

job duties for a proffered position from O*NET or another Internet source, however, is generally insufficient to establish H-1B eligibility.³ Cf. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990) (Specifics are an important indication of the nature of the Beneficiary's duties, otherwise meeting the requirements would simply be a matter of providing a job title or reiterating the regulations.). While this type of description may be appropriate when defining the range of duties that may be performed within an occupational category, it does not adequately convey the substantive work that the Beneficiary will perform on a day-to-day basis.⁴ The duties themselves provide the nature of the employment. *Id.*

The portion of the description of the Beneficiary's duties that was not copied verbatim from O*NET lacks the specificity and detail necessary to support the Petitioner's assertion that the position is a specialty occupation. To establish eligibility, the Petitioner must describe the Beneficiary's specific duties and responsibilities in the context of its business operations, demonstrate that a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the Beneficiary for the duration of the employment period requested in the petition. However, the Petitioner describes the proffered position in general terms that do not convey sufficient substantive information to establish the relative complexity, uniqueness, or specialization of the proffered position or its duties. For example, the Petitioner indicated that the Beneficiary will "utilize expertise in developing queries," "designing and writing core codes for the application," and "work directly with business partners to gather requirements, support testing, etc." The Petitioner also indicated that the Beneficiary will "design and develop new and update existing reports in Crystal Reports based on business requirements," but has not provided information regarding "Crystal Reports."

While the Petitioner submits another job description in response to the Director's request for evidence (RFE), the duties are similarly vague, including "check all websites forms to ensure they are working properly," "check for any broken links," "check and update security certificate," and "checking and ensuring the speed of the website." The responsibilities for the proffered position

application (LCA). The Petitioner classified the proffered position under the occupational category "Software Developers, Applications" corresponding to the SOC code 15-1132 on the LCA. "Software Developers, Systems Software" has SOC code 15-1133. Notably, "Software Developers, Systems Software" has a higher prevailing wage than "Software Developers, Applications." If the job opportunity consists of a combination of O*NET occupations, the Petitioner should select the relevant occupational code for the highest paying occupation, which in this case appear to be "Software Developers, Software Systems." 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. Therefore, the Petitioner has not submitted a certified LCA that corresponds to the claimed duties of the proffered position under 20 C.F.R. § 655.705(b).

³ On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner is required to provide the job title, occupational code for the position, and describe the proposed duties.

⁴ DOL guidance states that for a wage level determination, it is important that the job description include "sufficient information to determine the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties." 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.

contain generalized functions without providing sufficient information regarding the particular work and associated educational requirements.

In addition, we note that the record of proceedings lacks documentation regarding the Petitioner's business activities and the actual work that the Beneficiary will perform to sufficiently substantiate the claim that the Petitioner has H-1B caliber work for the Beneficiary for the period of employment requested in the petition.

For example, the Petitioner has provided inconsistent and contradictory information regarding the projects and the Beneficiary's employment. For example, in its response to the RFE, the Petitioner provided more information regarding its in-house projects, [REDACTED] and [REDACTED] project. The November 22, 2016, letter from the vice-president of operations indicated that "both the projects have been launched" and "have thousands of visitors and thousands of people utilizing the website on a daily basis." The Petitioner's RFE response, however, also said of the projects that only "one of [the projects] has already been launched and [the] rest are in the process of completion and will be launched by the year 2016-2017." On appeal, the Petitioner states that it "is planning on launching" [REDACTED]. According to a project charter for [REDACTED], the project will not be implemented into production until December 6, 2017, and the project will be completed on March 22, 2018.⁵

The Petitioner also submitted versions 1.2 and 1.3 of the "[REDACTED] Project Charter" with revision dates of January 5, 2016, and November 2, 2016, respectively which provide a "schedule" of milestones as indicated in pertinent part below:

Milestone	Version 1.2	Version 1.3
Executive Steering Council Approval	7/11/2011	7/11/2014
IT Business	8/15/2011	8/15/2014
IT Technical	9/1/2011	9/1/2014
Begin IT Planning and Design Phase	11/3/2014	11/3/2014
Begin User Testing	2/1/2016	10/18/2017
Complete User Testing	10/14/2016	11/1/2017
User Training	11/1 – 11/22/2016	Ongoing
Implementation into Production	12/8/2016	2/8/2019

In addition to the inconsistencies in the two versions as indicated above,⁶ we must also note that neither version has been signed in the "project charter approval" section indicating that the project charter has been reviewed and the project authorized and funded.

⁵ The November 3, 2016, letter from the vice-president of operations also lists March 22, 2018, as the projected end-date, but also indicates that the project is "on hiatus" and needs a "new team of consultants to finish the development and make the final product for the market."

⁶ For example, in January 2016, the document indicated that the project had received executive steering council approval in 2011, but in November 2016, the document indicated that the project did not receive approval until 2014 and version 1.2 indicated that user testing would take more than 8 months, but in version 1.3, it was changed to 2 weeks.

Of additional concern is the fact that the Petitioner submitted two employment agreements, one of which was submitted with the initial petition and the other in response to the Director's RFE, and the addendum to the agreement, which was submitted on appeal, all of which were purportedly signed on the same day. However, the documents were signed by two different individuals [REDACTED] and [REDACTED] both listed as the human resources manager. The Petitioner has not explained why two different individuals employed as human resources managers signed the same documents on the same day.

There are additional inconsistencies regarding the length of employment the Petitioner is requesting. On the Form I-129, the requested employment period was October 1, 2016, through September 9, 2019. According to the initial support letter, however, "[t]he intended period of employment is until December 28, 2014" and according to the signed employment agreement, the Petitioner is only engaging the Beneficiary "to perform the duties . . . on an as needed basis" and the "term of this Agreement shall be for one year from the date first above written," which is March 22, 2016. For H-1B approval, the Petitioner must demonstrate that it has sufficient H-1B caliber work for the Beneficiary for the entire period of employment requested in the petition.

The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1998). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* We consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989).

As a result of the inconsistencies discussed above, the Petitioner has not provided sufficient evidence to substantiate its claims that the Beneficiary will work on two in-house projects for the entire requested H-1B validity period.⁷ In addition, for all of these reasons, we find that the Petitioner has

⁷ 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.

not credibly established the substantive nature of the work to be performed by the Beneficiary. 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) 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.

Further, the Petitioner's educational requirements do not sufficiently establish the proffered position as a specialty occupation. For example, in the support letter, the Petitioner indicated the following:

This is a professional position requiring a Bachelor's degree or equivalent education that is normally the minimum requirements for entry into this position. A Software Developer is a professional position, which requires a theoretical and practical application of a body of highly specialized knowledge, which is obtained through a minimum of a Bachelor's degree. In order to successfully discharge the duties and to complete the job requirements in suitable manner, a Bo & Crystal Reports Developer must have theoretical and practical application of a body of highly specialized knowledge in the field of Computer Science, and requires a bachelor's degree or higher in the related field.

Here, while the Petitioner states that the proffered position requires a bachelor's degree, it does not state a specific specialty or define "the related field." Further, the Petitioner refers to "a Bo & Crystal Reports Developer" and states that such a position requires specialized knowledge in the field of "computer science," but it is not clear if the Petitioner is referring to the proffered position. 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. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, 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 mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without

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 change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

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.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references his qualifications. 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.

The Petitioner asserts that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that that degree be in any specific specialty. Without more, the Petitioner's statement alone indicates that the proffered position is not in fact a specialty occupation.

II. CONCLUSION

The Petitioner has not sufficiently established that: 1) it has in-house employment for the Beneficiary for the entire validity period requested; and 2) the proffered position qualifies as a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of R-T-, Inc*, ID# 466528 (AAO Sept. 5, 2017)