



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

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

MATTER OF M-S- LLC

DATE: SEPT. 21, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer company, seeks to temporarily employ the Beneficiary as a “graphic designer” 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 Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish that the proffered position qualified as a specialty occupation. On appeal, the Petitioner asserts that the Director’s interpretation was incorrect.¹

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.

¹ We note that the Petitioner indicated it would file a brief or additional evidence within 30 days of filing the appeal. However, we have not received the submission within the allotted timeframe or thereafter.

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

The Petitioner initially stated that the Beneficiary would serve as a “graphic designer” and submitted a letter that provided the following job duties:

- Assist in the development of and maintaining all marketing resource materials-brochures, data, slides, color copies, photographs, files, and client database.
- Assist in the coordination and assembly of materials for client presentations and interviews, in accordance with Corporate Image Program and Desk Top Publishing Guidelines.
- Assist in the maintenance of back-up data on project and office personnel; assures that resume file information is current and appropriate.
- Assist in group mail-outs; maintains mailing lists.
- Assist with the coordination of work with outside vendors (electronic transfer of data, reprographics, binding, etc.) and consultants.
- Coordinates services of outside graphics and reprographic vendors for marketing purposes.
- Assist with conference/seminar presentation.

- Take staff photos weekly.
- Take project photography as needed.
- May participate in marketing efforts with other senior staff.
- Takes personal responsibility for fostering a green workplace through sustainable work practices.

In its response to a request for evidence (RFE), the Petitioner amended the position's duties to the following:

- Design layouts for print publications.
- Design layout of art or product exhibits, displays, or promotional materials.
- Confer with marketing team to determine needs.
- Create computer-generated graphics or animation.
- Collaborate with others to develop or refine designs.
- Review art or design materials.
- Draw detailed or technical illustrations.
- Maintain records, documents, or other files.
- Research new technologies.
- Operate still or video cameras or related equipment.
- Attend daily briefings with the marketing team to understand the target market.
- Conduct research and read articles relating to the target market.
- Design artwork that would appeal to the population.
- Work on artwork rendering to ensure that the art work does not distort when opened on a desktop computer or whether opened on a cell phone or tablet.
- Prepare work to be accomplished by gathering information and materials.
- Plan concept by studying information and materials.
- Illustrate concept by designing rough layout of art and copy regarding arrangement, size, type size and style, and related aesthetic concepts.
- Obtain approval of concept by submitting rough layout for approval.
- Prepare finished copy and art by operating typesetting, printing, and similar equipment; purchasing from vendors.
- Prepare final layout by marking and pasting up finished copy and art.
- Ensure operation of equipment by completing preventive maintenance requirements; following manufacturer's instructions; troubleshooting malfunctions; calling for repairs;
- Maintain equipment, inventories; and evaluate any new equipment.
- Complete projects by coordinating with outside agencies, art services, printers, etc.
- Maintain technical knowledge by attending design workshops; reviewing professional publications; participating in professional societies.
- Contribute to team effort by accomplishing related results as needed.

Within the initial filing, the Petitioner stated that the usual minimum requirement to perform this job was a bachelor's degree in business administration, marketing, or a related field, or its equivalent. The Petitioner further indicated that it requires candidates to possess "some experience in addition to the educational background" as it relates to problem solving and the company's marketing strategy, but it did not signify a specific amount of experience.

III. 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.

A. Inconsistencies in the Record

First, we find that there are inconsistencies and discrepancies in the petition and supporting documents, which lead us to question the Petitioner's claim with regard to the services the Beneficiary will perform, as well as the actual nature and requirements of the proffered position. When a petition includes discrepancies, those inconsistencies will raise concerns about the veracity of the Petitioner's assertions.²

For example, the Petitioner's support letter stated "all our marketing strategies are developed by our team in [REDACTED] Pakistan. We believe that having an expert within our ranks, here in our office would greatly make a difference in the impact that our marketing would have." The Petitioner continued stating that the Beneficiary "will be assuming the market research analyst position with the Petitioner." However, the labor condition application (LCA), petition, and remaining material present the position as a graphic designer. The Petitioner has not explained why it presented the position as a marketing research analyst.

Furthermore, the Petitioner's support letter also stated it will compensate the Beneficiary at the rate of \$40,000 per year, while the LCA and petition reflect his compensation will be \$45,000 annually. The Petitioner has not provided an explanation for the different salaries. In addition, the Petitioner mistakenly and repeatedly referenced the Beneficiary using feminine pronouns. The record provides no explanation for this inconsistency. Thus, we must question the accuracy of the letter and whether the information provided is correctly attributed to this particular Beneficiary and this position.

B. Degree Requirement

Second, the Petitioner's claim that a bachelor's degree in business administration is sufficient for the proffered position is inadequate to establish that it qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that

² "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

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 general degree, such as business administration, without further specification, does not establish the position as a specialty occupation.³

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 discussed, 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. 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 finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147.⁴

Again, the Petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. Without more, this assertion alone indicates that the proffered position is not in fact a specialty occupation.

We also note that although the Petitioner identified the proffered position as a graphic designer, it did not include a bachelor's degree in graphic design as one of the education requirements. On the basis of the proffered position's educational requirement, we cannot conclude that it qualifies as a specialty occupation.

C. Position Duties

Moreover, a crucial aspect of this matter is whether the Petitioner has sufficiently described the duties of the proffered position such that we may discern the nature of the position and whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge

³ 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.").

⁴ Specifically, the judge explained in *Royal Siam*, 484 F.3d at 147, that:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

attained through at least a baccalaureate degree in a specific discipline. We find that the Petitioner has not done so.

For example, the Petitioner did not provide sufficient information with regard to the order of importance or frequency of occurrence (e.g., regularly, periodically, or at irregular intervals) with which the Beneficiary will perform the functions and tasks. Thus, the record does not specify which tasks are major functions of the proffered position.

In addition, we find that the job duties the Petitioner initially provided are virtually identical to those for a graphic designer found on an employment website.⁵ Furthermore, the vast majority of the duties the Petitioner submitted in response to the RFE are copied verbatim from the U.S. Department of Labor's (DOL) Occupational Information Network (O*NET) OnLine Details Report for the occupational category "Graphic Designers,"⁶ or from an additional employment website.⁷ While a general description may be appropriate when defining the range of duties that are performed within an occupation, such a generic description generally cannot be relied upon by the Petitioner when discussing the duties attached to specific employment for H-1B approval.

In establishing such a position as a specialty occupation, the description of the proffered position must include sufficient details to substantiate that the Petitioner has H-1B caliber work for the Beneficiary. Here, the job descriptions from the Petitioner do not sufficiently communicate: (1) the actual work that the Beneficiary would perform; (2) the complexity, uniqueness or specialization of the tasks; or (3) the correlation between that work and a need for a particular level of knowledge in a specific specialty.

For instance, the abstract level of information provided about the proffered position and its duties is exemplified by the Petitioner's assertion that the Beneficiary will "assist" in various aspects of branding and marketing. However, the statements did not provide sufficient insight into the Beneficiary's actual duties, nor did they include further details regarding the specific tasks that the Beneficiary will perform.

Further, the Petitioner claimed in pertinent part that the Beneficiary will "coordinate" and "collaborate" with others. Notably, the Petitioner did not demonstrate how the performance of these duties, as described in the record, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

⁵ See [https://\[REDACTED\]](https://[REDACTED]) accessed on Sept. 20, 2017, and incorporated into the record of proceedings.

⁶ For additional information, see O*NET OnLine, available at <https://www.onetonline.org/link/details/27-1024.00> (last visited Sept. 20, 2017).

⁷ See [https://\[REDACTED\]](https://[REDACTED]) accessed on Sept. 20, 2017, and incorporated into the record of proceedings.

The Petitioner also claimed the Beneficiary will “[m]aintain records, documents, or files . . . [r]esearch new technologies,” and “[take] personal responsibility for fostering a green workplace through sustainable work practices.” The Petitioner’s statements do not convey sufficient pertinent details as to the actual work involved in these tasks. The Petitioner did not convey how a baccalaureate level of education (or higher) in a specific specialty, or its equivalent, would be required to perform these tasks. Thus, the overall responsibilities for the proffered position contained general functions without providing sufficient information regarding the particular work and the associated educational requirements into which the duties would manifest themselves in their day-to-day performance within the Petitioner’s business operations.

In addition, the Petitioner stated that the Beneficiary will be working with a marketing team, but it did not offer any material relating to such a group. We note the following deficiencies relating to the marketing team: (1) no explanation of how the Beneficiary will interact with the marketing team; (2) no marketing plan outlining how the Beneficiary will work with the marketing team; (3) no indication of whether or not the marketing team is part of the Petitioner’s six current employees, or whether it will need to hire the team; (4) no specifics of how the marketing team will fit into the Petitioner’s organizational structure; and (5) no information of whether the marketing team will be permanent or temporary staff.

Such generalized information does not in itself establish a necessary correlation between any portion of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. It is not evident that the proposed duties as described in this record of proceedings, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that the Petitioner described the duties, the petitioning organization did not provide a sufficient factual basis for conveying the substantive matters that would engage the Beneficiary in the actual performance of the proffered position for the approximate three-year period requested. As a result, the Petitioner did not persuasively support the claim that the position’s actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specialty directly related to the duties and responsibilities of the proffered position.

As a result, the Petitioner has not established the substantive nature of the work that the Beneficiary will perform, which precludes a finding that the proffered position satisfies any criteria 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 one;⁸ (2) industry positions which are parallel to the proffered position and thus appropriate for review for

⁸ Within the RFE response, the Petitioner provided the O*NET Summary Report for “Graphic Designers” and claimed this material illustrated that 62 percent of employers list a bachelor’s degree as a requirement for the position. This is a reference to the “Education” portion of the Summary Report which provides summary data on the education level required for graphic designers. While the Summary Report provides the educational requirements of “respondents,” it does not account for 100 percent of the “respondents.” The respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty.

a common degree requirement, under the first alternate prong of criterion two;⁹ (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.

IV. CONCLUSION

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.

ORDER: The appeal is dismissed.

Cite as *Matter of M-S- LLC*, ID# 583076 (AAO Sept. 21, 2017)

⁹ The Petitioner submitted copies of job announcements placed by other employers. However, some of the job postings do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is a software services company, whereas the advertising organizations include a vehicle decal company, a graphic design studio, and an employment placement company. The Petitioner did not supplement the record of proceedings to establish that these advertising organizations are similar. Moreover, the position in the [REDACTED] announcement requires a bachelor's degree in graphic design in addition to two to four years of graphic design experience. Thus, it appears to be for a more senior position than the proffered position.

It must be noted that the Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). 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 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. 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. 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.*