



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

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

MATTER OF Q-S-, INC.

DATE: SEPT. 28, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer programming company, seeks to temporarily employ the Beneficiary as an “operations 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 California Service Center denied the petition, concluding that the record did not establish that: (1) the proffered position qualifies as a specialty occupation; (2) the Petitioner would engage the Beneficiary in an employer-employee relationship; and (3) the submitted Labor Condition Application (LCA) corresponds to and supports the petition.

On appeal, the Petitioner asserts that the Director erred in denying the petition. Upon *de novo* review, we will dismiss the appeal.

I. SPECIALTY OCCUPATION

We will first address whether the Petitioner has established that the proffered position qualifies as a 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. Proffered Position

In response to the Director’s request for evidence (RFE), the Petitioner provided the following position description and job duties for the proffered position (verbatim):

The beneficiary is responsible for making decisions, both large and small and should make sure he controls risk and minimizes uncertainty. . . . He will use project management software, such as [REDACTED] to organize his tasks and workforce. These software packages allow the beneficiary to produce reports and charts.

The Beneficiary will create, modify, and test the code, forms, and script that allow computer applications to run. The Beneficiary will also work from specifications drawn up by software developers or other individuals and assist software developers by analyzing user needs and designing software solutions.

Key components, which will be handled with [the Petitioner’s] in-house project, are as follows:

1. Correct errors by making appropriate changes and rechecking the program to ensure that the desired results are produced.
2. Conduct trial runs of programs and software applications to be sure they will produce the desired information and that the instructions are correct.
3. Write, update, and maintain computer programs or software packages to handle specific jobs such as tracking inventory, storing or retrieving data, or controlling other equipment.
4. Write, analyze, review, and rewrite programs using workflow chart and diagram, and applying knowledge of computer capabilities, subject matter, and symbolic logic.
5. Perform or direct revision, repair, or expansion of existing programs to increase operating efficiency or adapt to new requirements.

Roles and Responsibilities

The role of the Operation Research Analyst encompasses many activities including: Formulate mathematical or simulation models of problems, relating constants and variables, restrictions, alternatives, conflicting objectives, and their numerical parameters. Collaborate with senior managers and decision makers to identify and solve a variety of problems and to clarify management objectives. Collaborate with others in the organization to ensure successful implementation of chosen problems solutions. Prepare management reports defining and evaluating problems and recommending solutions. Study and analyze information about alternative courses of action to determine which plan will offer the best outcomes. Specify manipulative or computational methods to be applied to models. Perform validation and testing of models to ensure adequacy and reformulate models as necessary. Define data requirements and gather and validate information, applying judgement and statistical tests. Analyze information obtained from management to conceptualize and define operational problems. Observe the current system in operation and gather and analyze information about each of the parts of component problems, using a variety of sources.

According to the Petitioner, the proffered position requires a bachelor's degree in computer science, computer applications, commerce, business administration, or a related technical field.

C. Analysis

For the reasons set out below, we have determined that the proffered position does not qualify 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

¹ The Petitioner submitted documentation in support of the H-1B petition, including evidence regarding the proffered

1. Minimum Requirements

As a preliminary matter, 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 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. *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 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 147.²

Further, the Petitioner stated that a degree in one of several disparate fields (specifically: engineering, computer science, computer applications, commerce, or business administration) is sufficient for the position. Notably, in general, provided the specialties are closely related, e.g., finance and accounting, 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 degrees in disparate fields, 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 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.³ Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner has not made this showing.

position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

² 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.

³ 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

2. Position Description

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

For example, the Petitioner's job descriptions are recited virtually verbatim from Occupational Information Network (O*NET) OnLine Summary Report's list of duties associated with an operations research analyst⁴ and a computer programmer.⁵ Providing job duties for a proffered position from O*NET is generally not sufficient for establishing H-1B eligibility. That is, while this type of description may be appropriate when defining the range of duties that may be performed within an occupational category, it cannot be relied upon by the Petitioner when discussing the duties attached to specific employment for H-1B approval as this type of generic description fails to adequately convey the substantive work that the Beneficiary will perform on a day-to-day basis. In establishing a position as qualifying as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary 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 period of employment requested in the petition.

Thus, these are issues that preclude the approval of the petition. Nevertheless, we will analyze the evidence of record to determine whether the proffered position as described qualifies as a specialty occupation pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).⁶

3. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁷

particular position.

⁴ For additional information, see O*NET OnLine, available at <https://www.onetonline.org/link/summary/15-2031.00> (last visited Sept. 27, 2017, 2017).

⁵ For additional information, see O*NET OnLine, available at <https://www.onetonline.org/link/summary/15-1131.00> (last visited Sept. 27, 2017).

⁶ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁷ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position

On the labor condition application (LCA)⁸ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Operations Research Analysts” corresponding to the Standard Occupational Classification code 15-2031. However, the evidence of record does not sufficiently demonstrate that the Beneficiary will be exclusively performing the duties of an operations research analyst.

For example, the purpose of an RFE is to provide a petitioner with an opportunity to clarify whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, the Petitioner cannot materially change the associated job responsibilities. Rather, the Petitioner must establish that the position offered to the Beneficiary when the petition was filed merits classification for the benefit sought. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978). If significant changes are made, the Petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Here, in response to the RFE, the Petitioner changed the Beneficiary’s job duties to include a significant number of tasks and responsibilities associated with the occupational category “Computer Programmers.” The Petitioner had not previously claimed that the Beneficiary’s work would include these (or similar) tasks.

Moreover, 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.

Since a substantial number of the proffered position’s duties are associated with the occupational category “Computer Programmers,” we reviewed the *Handbook’s* subchapter entitled “How to Become a Computer Programmer,” which states, in pertinent part, that “some employers hire workers with an associate’s degree.” Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Computer Programmers (2016-17 ed.). Thus, the *Handbook* does not support the Petitioner’s assertion that a bachelor’s degree is required for entry into this occupation.

In the instant matter, the Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁸ 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).

4. Second Criterion

The second criterion presents two alternative prongs: “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[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

a. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors we often consider include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative sources) reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry attesting that such firms “routinely employ and recruit only degreed individuals.”

In support of this criterion, the Petitioner provided copies of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner’s reliance on the job announcements is misplaced.

First, we note that some of the job postings do not appear to involve organizations similar to the Petitioner. For example, one is a not for profit entity dedicated to protecting U.S. national interests, one is a large company working with U.S. agencies on U.S. security issues, and one does not provide any information regarding the hiring employer. The Petitioner also did not supplement the record of proceedings to establish that these advertising organizations are similar to it.

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing

(to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a basis for such an assertion.

Second, the advertisements do not appear to be for parallel positions. For instance, the postings appear to be for more senior, experienced employment than the proffered position.⁹ Moreover, some of the postings do not include sufficient information about the duties and responsibilities for the advertised positions. Thus, it is not possible to determine important aspects of the jobs, such as the day-to-day responsibilities, complexity of the job duties, supervisory duties (if any), and independent judgment required or the amount of supervision received. Therefore, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

Third, none of the postings indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.¹⁰ The job postings suggest, at best, that a bachelor's degree is sometimes required for computer programmer positions, but a bachelor's degree in a *specific specialty* (or its equivalent) is not.¹¹

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.¹² That is, not every deficit of every job posting has been addressed.

Without more, the Petitioner has not provided sufficient evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

⁹ For instance: Anser requires an advanced degree in a discipline relevant to the position and two years of relevant professional experience or a bachelor's degree and five years of relevant professional experience; [REDACTED] requires a degree and three years of experience with military planning at a [REDACTED] level; and [REDACTED] requires a degree and five years of experience. However, the Petitioner indicated that the proffered position is an entry level (Level I) position on the LCA.

¹⁰ As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

¹¹ It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

¹² The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

b. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

Here, given that the Petitioner's position description was copied verbatim from an online source for two distinct occupations, the Petitioner has not provided a credible position description and has not demonstrated that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. As such, it cannot be concluded that the Petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

5. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

The record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. *See Defensor v. Meissner*, 201 F.3d at 387-88. Were we limited solely to reviewing a petitioner's claimed self-imposed requirements, an organization could bring any individual with a bachelor's degree to the United States to perform any occupation as long as the petitioning entity created a token degree requirement. *Id.* Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

In response to the RFE, the Petitioner provided a job posting from its website for the position of operations research analyst. The Petitioner did not provide further information or evidence regarding its recruiting history for the position. Without more, the submission of one posting is not persuasive in establishing that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. Therefore, it has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

6. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The Petitioner asserts that the job duties of the proffered position are specialized and complex. We refer to our earlier comments and findings with regard to the implication of the Petitioner's copying of the position duties from an online source. As such, the Petitioner has not demonstrated that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

IV. UNITED STATES EMPLOYER AND LABOR CONDITION APPLICATION

The Director denied the petition on three separate grounds, two of which concluded that: (1) the Petitioner would not engage the Beneficiary in an employer-employee relationship; and (2) that the LCA submitted does not correspond to the petition. However, we will reserve this issue as we have found that the proffered position is not a specialty occupation.

V. CONCLUSION

The appeal must be dismissed because the Petitioner did not establish that the proffered position is a specialty occupation.¹³

ORDER: The appeal is dismissed.

Cite as *Matter of Q-S-, Inc.*, ID# 613878 (AAO Sept. 28, 2017)

¹³ Because this issue precludes the approval of the petition, we will not address any of the additional issues we have observed in our *de novo* review of this matter.