



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

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

MATTER OF I-, LLC

DATE: DEC. 18, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a shipping, retail, and office services business, seeks to temporarily employ the Beneficiary as a “Marketing Specialist” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, Vermont Service Center, revoked the approval of the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. ISSUE

The issue before us is whether the Director properly revoked the approval of the petition.¹

II. REVOCATION

U.S. Citizenship and Immigration Services (USCIS) may revoke the approval of an H-1B petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which states the following:

- (A) Grounds for revocation. The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
 - (2) The statement of facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or

¹ We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see also* 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

- (3) The petitioner violated terms and conditions of the approved petition; or
- (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

Upon review of the record, we determine that the Director properly revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5): “The approval of the petition violated paragraph (h) of this section or involved gross error.” The Director’s initial approval of the petition violated paragraph (h) of this section, in that the evidence of record was insufficient to establish that the Beneficiary was qualified to perform the duties of the proffered position.

III. BENEFICIARY QUALIFICATIONS

A. Legal Framework

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an individual applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that a beneficiary must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Therefore, to qualify a beneficiary for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that the beneficiary has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;²

² The Petitioner should note that, in accordance with this provision, we will accept a credential evaluation service's

- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;³
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

evaluation of *education only*, not training and/or work experience.

³ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. 8 C.F.R. § 214.2(h)(4)(ii). A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. *Id.*

(b)(6)

Matter of I-, LLC

It is always worth noting that, by its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for application and determination by USCIS, and that, also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), including, but not limited to, a type of recognition of expertise in the specialty occupation.

B. Factual History

The Petitioner is a five-employee franchise of [REDACTED] and seeks to employ the Beneficiary in a full-time “Marketing Specialist” position.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title 13-1161, “Market Research Analysts and Marketing Specialists,” from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

The Petitioner described the job duties of the proffered position as follows:

Research market conditions in local, regional, or national areas, or gather information to determine potential sales of a product or service. May gather information on competitors, prices, sales, and methods of marketing and distribution. The Market Research Analyst is principally responsible for interpreting data, formulating reports and making recommendations based upon the research findings. To accomplish this task, the Market Research Analyst works with the client (either internal or external) to understand, define and document the overarching business object. The Market Research Analyst applies qualitative and quantitative techniques to interpret the data and produce substantial recommendations. Market Research Analysts frequently present the findings and recommendations to the client.

The Petitioner listed the requirements for the proffered position as including a bachelor’s or advanced degree in Industrial Engineering or Business, and several years of related experience.

The Petitioner submitted evidence that the Beneficiary has the equivalent of a U.S. bachelor’s degree in Industrial Engineering. The Petitioner also submitted, *inter alia*, the Beneficiary’s transcript from the [REDACTED] from which the Beneficiary graduated with a bachelor’s degree in Industrial Engineering – Industrial Production.

In a letter dated December 7, 2012, submitted in response to the Director’s request for evidence (RFE), the Petitioner asserted that “[t]he [B]eneficiary qualifies for the proffered position through his attainment of a U.S. equivalent Bachelor’s degree in Industrial Engineering which fully relates to a business/marketing degree for the purpose of working as a Marketing Specialist.” The Petitioner further asserted that the Beneficiary “has completed multiple core courses directly related to the theoretical knowledge required for Marketing Specialists as listed by the [Department of Labor] in

(b)(6)

Matter of I-, LLC

the [*Occupational Outlook Handbook*] and through O*NET,” including courses in “critical thinking, management, math, economics, quantitative research, business planning, and accounting.”

The Petitioner alternatively asserted that “even if the [B]eneficiary’s undergraduate degree was not related to a business degree, that the minimum requirement for a Marketing Specialist . . . is merely the possession of **any** U.S. equivalent Bachelor’s degree.”

In an undated letter, the Petitioner provided another description of the proffered job duties with percentages of time spent on each duty, as follows:

- Gather data about current and potential customers, competitors and market conditions in the [redacted] (35%)
- Analyze gathered data (20%)
- Report research results to [the Petitioner’s] management and proposed appropriate changes to sales[] (10%)
- Analyze and report on [the Petitioner’s] sales in terms of potential growth/maximization of return (25%)
- Analyze and report on [the Petitioner’s] business processes/operations in terms of effective maximization and growth (10%)

The Petitioner affirmed that the proffered position requires a bachelor’s or advanced degree in Engineering, Business, or a related field, and several years of related experience.

C. Analysis

We find that the evidence of record does not sufficiently demonstrate that the Beneficiary’s degree in Industrial Engineering qualifies him to perform the duties of the proffered position. The Petitioner must demonstrate that the Beneficiary obtained knowledge of the particular occupation in which he will be employed. *See Matter of Ling*, 13 I&N Dec. 35 (Reg’l Comm’r 1968).

The Petitioner seeks the Beneficiary’s services as a Marketing Specialist under the Market Research Analysts and Marketing Specialists occupational classification. While the Beneficiary appears to be qualified to perform the duties of a specialty occupation directly related to Industrial Engineering, the evidence of record does not demonstrate how the Beneficiary, by virtue of holding a degree in Industrial Engineering, is qualified to perform the duties of the Marketing Specialist position proffered here. That is, the evidence of record does not sufficiently demonstrate how the Beneficiary’s degree in Industrial Engineering provides him with the body of highly specialized knowledge required to perform the proffered duties.

According to the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)*, “[m]arket research analysts typically need a bachelor’s degree in market research or a related field.”⁴

⁴ We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety

(b)(6)

Matter of I-, LLC

U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., “Market Research Analysts,” <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited Dec. 1, 2015). The *Handbook* likewise states that “[c]ourses in . . . marketing are essential for these workers.” *Id.* Here, however, the Petitioner did not furnish sufficient evidence to establish that the Beneficiary’s degree in Industrial Engineering encompasses any marketing courses that provides him the body of highly specialized knowledge in market research “essential” to performing the proffered duties.

Moreover, the evidence of record is insufficient to establish that the Beneficiary’s degree in Industrial Engineering could reasonably be considered “related” to a degree in market research. The Petitioner asserted that the Beneficiary’s degree in Industrial Engineering “qualifies as a related degree” because of “multiple core courses directly related to the theoretical knowledge required for Marketing Specialists.” The Petitioner listed these “multiple core courses” as including courses in “critical thinking, management, math, economics, quantitative research, business planning, and accounting.” In support, the Petitioner pointed to the *Handbook*’s statement indicating that market research analysts need strong math and analytical skills.⁵ See U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., “Market Research Analysts,” <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-1> (last visited Dec. 1, 2015).

However, the Petitioner has not sufficiently established how a few related or overlapping courses, such as management and math, provide sufficient preparation for the proffered position in the absence of “essential” marketing courses. While a few related or overlapping courses may be beneficial, or even required, to perform certain duties of the proffered position, the Petitioner did not demonstrate that these related or overlapping courses, alone, adequately provide the Beneficiary with the knowledge necessary to perform the proffered position. For example, it is not clear how courses in management and math provide the Beneficiary with the necessary knowledge to perform the proffered duty of “[gathering] data about current and potential customers, competitors and market conditions in the [redacted]” which accounts for 35% of the proffered position’s time.

We note that the Petitioner did not claim that the Beneficiary’s degree was equivalent to a degree in any field other than Industrial Engineering. The Petitioner also did not submit sufficient information in order for USCIS to have made an equivalency determination in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Accordingly, as sufficient evidence was not presented that the Beneficiary has at least a bachelor’s degree in a specific specialty, or its equivalent, related to the duties and responsibilities of the proffered position, we cannot find that the Beneficiary is qualified to perform

of occupations that it addresses. The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. All our references to the *Handbook* are to the 2014 – 2015 edition available online.

⁵ The 2012-2013 edition of the *Handbook*, to which the Petitioner cited, stated that “[m]arket research analysts need strong math and analytical skills.” Although this exact statement is no longer in the 2014 – 2015 edition, the 2014 – 2015 edition contains a similar statement that “[s]trong math and analytical skills are essential.”

the duties of the proffered position. The appeal will be dismissed and the approval of the petition revoked for this reason.

IV. SPECIALTY OCCUPATION

Finally, we will address another additional, independent ground, not identified by the Director's notice of revocation, that would also warrant revocation of the approval of this petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5). Specifically, we find that the evidence of record is insufficient to establish that the proffered position qualifies as a specialty occupation.

Here, the Petitioner attested that the minimum educational requirement for the proffered position could be satisfied by a bachelor's degree in engineering or business. However, the Petitioner's acceptance of bachelor's degrees in engineering or business, without more, is inadequate to establish that the proposed position qualifies as a specialty occupation.

First, the Petitioner's requirement of a degree in business, without further specification, indicates that the proffered position does not qualify as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (stating that a requirement of a general-purpose bachelor's degree, such as a business administration degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa). 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. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, 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).

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. The regulation at 8 C.F.R. § 214.2(h)(4)(ii), in pertinent part, defines the term "specialty occupation" as an occupation which requires the attainment of a bachelor's degree or higher *in a specific specialty*, or its equivalent, as a minimum for entry into the occupation in the United States. In addition, USCIS interprets 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.⁶ Although a general-

⁶ 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Fed. Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R.

purpose bachelor's degree in Business 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. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).⁷

Second, a minimum entry requirement of degrees in two disparate fields, such as engineering and business, further indicates that the proffered position does not qualify as a specialty occupation. In general, provided the specialties are closely related (e.g., chemistry and biochemistry), a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as engineering and business, 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.⁸ Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner did not do so here. In other words, the Petitioner has not sufficiently established how the fields of engineering and business are closely or directly related to the duties and responsibilities of the particular position proffered in this matter.

§ 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation. As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

⁷ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* 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.

Id.

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

Therefore, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. The Petitioner even admitted as much, asserting that "the minimum requirement for a Marketing Specialist . . . is merely the possession of **any** U.S. equivalent Bachelor's degree." As discussed above, the claim that a general bachelor's degree is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation.

The proffered position is further precluded from recognition as a specialty occupation for additional reasons. For instance, we observe that the LCA submitted to support the petition states that the proffered position corresponded to SOC code and title 13-1161, "Market Research Analysts," from O*NET. According to the *Handbook*, a bachelor's or higher degree *in a specific specialty*, or the equivalent, is not a normal minimum entry requirement into the occupation. That is, the *Handbook* states that, in addition to a degree in market research, degrees in statistics, math, computer science, business administration, any of the social sciences, or communications may also suffice for entry into market research analyst positions. U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Market Research Analysts," <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited Dec. 1, 2015). As discussed above, the acceptance of a general-purpose business degree or degrees in disparate fields indicates that the proffered position does not qualify as a specialty occupation.

As the evidence of record is insufficient to establish that the proffered position qualifies as a specialty occupation, the matter would have to be remanded for the purpose of issuing a new notice of intent to revoke, even if the grounds for revocation identified by the Director were overcome on appeal.

V. CONCLUSION

Upon review of the record, we determine that the Director properly revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5). The petition will remain revoked and the appeal dismissed. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of I-, LLC*, ID# 15024 (AAO Dec. 18, 2015)