



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 28 2015**

PETITION RECEIPT #: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. Please do not mail any motions directly to the AAO.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

I. FACTUAL AND PROCEDURAL BACKGROUND

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center. In the Form I-129 visa petition, the petitioner describes itself as a specialty chassis manufacturer that was established in [REDACTED]. In order to employ the beneficiary in what it designates as a composites engineer position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The Director reviewed the record of proceeding and determined that the petitioner did not establish eligibility for the benefit sought. Specifically, the Director stated that the petitioner had not established that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory. The Director denied the petition.

The record of proceeding contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the Director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the Director's decision; and (5) the Notice of Appeal or Motion (Form I-290B) and supporting documentation. We reviewed the record in its entirety before issuing our decision.¹

For the reasons that will be discussed below, we agree with the Director that the petitioner has not established eligibility for the benefit sought. Accordingly, the Director's decision will not be disturbed. The appeal will be dismissed.

II. SPECIALTY OCCUPATION

The primary issue is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.

A. Legal Framework

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must meet one of the following criteria:

- (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.

As a threshold issue, it is noted that 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). In other words, this 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. Federal 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. § 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), U.S. Citizenship and Immigration Services (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. 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"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In ascertaining the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the Director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

B. Proffered Position

With the initial petition, the petitioner provided the following job description for the proffered position:

Direct Reports

Composites Technicians

Tasks

- Coordinate and supervise the daily operations of the Composites production area.
- Apply composites skills to the development of procedures and execution of work orders.
- Interact with the Production Management for data collection and work planning.
- Cooperate with Engineering Office and Quality Control for analysis, resolution and prevention of technical inconveniences[.]

Main Responsibilities

- Supervise Composites Technicians in their day-to-day activities.
- Lead by example and enforce compliance to company policies regarding production procedures, quality system, building security, and employee behavior.
- Train new technicians in production procedures.
- Ensure that composites products meet quality requirements at minimal cost.
- Ensure proper documentation and data entry for work orders.
- Apply expertise in Composites engineering to solve problems and provide manufacturing input to composite part and procedure design and development.
- Perform Composites Technician tasks – lamination, curing, trimming, bonding, etc. on work orders for new products and repair services.
- Maintain inventory of pre-preg and similar raw materials physically stored in the Composites areas, and execute inventory transactions to work orders.
- Maintain area equipment and consumables and submit purchase requests.
- Develop time and materials estimates for products and jobs.

The document also provides the following information regarding the requirements for the position:

Educational Requirements

The requirements listed below are representative of the education, experience, knowledge, skills, and/or abilities an individual needs in order to perform this job successfully:

- Bachelor Degree in related field;
- Equivalent Technical High School Diploma with **ten years** of matured experience;³ or
- Two-year Technical/Vocational College plus five year[s] of experience.

Thereafter, in response to the RFE, the petitioner provided an expanded job description for the proffered position. The document includes the following information regarding the requirements for the position:

Educational Requirements

The requirements listed below are representative of the education, experience, knowledge, skills, and/or abilities an individual needs in order to perform this job successfully:

Bachelor Degree in related field[.]

Equivalent Technical High School Diploma with **five years** of matured experience.⁴

Two-year Technical/Vocational College plus five year[s] of experience[.]

Subsequently, with the appeal, the petitioner submitted a job description with the following requirements:

Educational Requirements

The requirements listed below are representative of the education, experience, knowledge, skills, and/or abilities an individual needs in order to perform this job successfully:

- Bachelor Degree in related field, or
- Two-year Technical/Vocational College plus five year[s] of experience.

³ Emphasis added.

⁴ Emphasis added.

According to the documentation submitted by the petitioner, it does not require a bachelor's degree in a specific specialty (or its equivalent) for the proffered position but, rather, a technical high diploma with five (or ten) years of experience, or a two-year degree with five years of experience are acceptable.⁵

C. Analysis

To qualify as a specialty occupation, the position must require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent, as the minimum for entry into the occupation. Section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) and (iii). Thus, the documentation submitted by the petitioner indicating that (1) a high school diploma and experience, or (2) a two-year degree and experience are acceptable denote that the proffered position is not in fact a specialty occupation.

In promulgating the H-1B regulations, the former INS made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.*

The petitioner has not demonstrated that it requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, the Director's decision must be affirmed and the appeal dismissed.

III. BENEFICIARY'S QUALIFICATIONS

A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner has not established that the proffered position requires a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications.

IV. CONCLUSION AND ORDER

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). Here, that burden has not been met.

⁵ Moreover, the petitioner had provided inconsistent information regarding the requirements of the proffered position.

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NON-PRECEDENT DECISION

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ORDER: The appeal is dismissed.⁶

⁶ As the identified grounds for denial are dispositive of the petitioner's eligibility, we need not address the additional issues in the record of proceeding.