



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

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

MATTER OF V-, INC.

DATE: APR. 12, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting and staffing business, seeks to temporarily employ the Beneficiary as a “Programmer Analyst” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) § 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, California Service Center, denied the petition. The Director concluded that the Petitioner had not established the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. The Petitioner submits additional documentation and asserts that it has established the proffered position as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

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

**I. THE LAW**

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). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted 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 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. THE PROFFERED POSITION

The Petitioner identified the proffered position as a “Programmer Analyst” on the Form I-129, and attested on the required labor condition application (LCA) that the occupational classification for the position is “Computer Programmers,” SOC (ONET/OES) Code 15-1131, at a Level I wage. The Petitioner stated on the Form I-129 and the LCA that the Beneficiary would be paid \$50,315 per year.

In a letter submitted in support of the petition dated March 30, 2015, the Petitioner stated that the Beneficiary would gather, analyze, develop, and test software packages and would perform the following duties:<sup>1</sup>

- Responsible for designing and maintaining the interface and back end services for the web application using Sharepoint and .Net technologies.
- Creating custom web parts and custom solutions according to business needs.
- Responsible for designing interactive user interface using HTML 5.0, CSS 2.0, AngularJS, Knockout JavaScript, Ajax and JavaScript.
- Troubleshooting and debugging of problems or defects that may appear in the web application.

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<sup>1</sup> Errors in the original text have not been changed in our decision.

(b)(6)

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- Store and retrieve data to and from the Microsoft SQL database using .Net related technologies.
- Implemented various abstract classes, and interfaces to construct the business logic using C# 4.0.
- Responsible for creating .net application using .NET Framework 4.5.1, Model View Controller (MVC), and Model View View Model (MVVM).
- Extensively used MVVM Lite to designed Windows Presentation Foundation (WPF) project.

In the same letter, the Petitioner noted that the Beneficiary would deliver services to [REDACTED] in [REDACTED] Missouri and that his annual salary would be \$65,000 per annum.

The Petitioner also submitted a copy of its job offer to the Beneficiary, signed by the Petitioner and the Beneficiary on April 15, 2014, stating that “[a]s a .NET Developer, [the Beneficiary] will be earning \$83,200 per year (\$40/HR).” The Petitioner also included a second letter dated March 30, 2015, regarding the Beneficiary’s “Job Itinerary.” In the job itinerary letter, the Petitioner stated that the Beneficiary would be working on various application development projects, including [REDACTED] “[REDACTED] and [REDACTED] for the Petitioner’s end client, [REDACTED].” The Petitioner stated further that the Beneficiary would spend 30 percent of his time on requirement gathering and analysis, 60 percent of his time on software design, development and testing, and 10 percent of his time on deployment and documentation.

A copy of an employment agreement between the Petitioner and the Beneficiary states that the Beneficiary will serve as a “.Net Developer” and that the Beneficiary will be paid \$67,600 per year.

The record in support of the petition also included a subcontractor master agreement between the Petitioner and [REDACTED] dated October 22, 2013, and purchase order number 29797 for the Beneficiary’s services as a .Net Developer with a start date of May 1, 2014, and an end date of September 1, 2014.

In response to the Director’s request for evidence (RFE), the Petitioner submitted its June 2014 advertisement for programmer analysts, which stated that the requirements for this position included a “Bachelor’s degree in Computer Science, Engineering, Business Administration, or a related field plus 5 years of experience.”

On appeal, the Petitioner submitted a second letter from its end client, [REDACTED] [REDACTED] stating that the Beneficiary had started working on May 1, 2014, as a developer and that the position’s duties included:

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<sup>2</sup> The Petitioner included an undated letter signed by a representative of [REDACTED] confirming that Beneficiary “has been on contract with the company since 05/01/2014 through [REDACTED] as a Developer.”

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Responsib[ility] for delivering enterprise-level solutions, as well as upholding the values and mission of the Information Systems department and the Development team. This includes the establishment of customer service and satisfaction standards. Communication and understanding of customer objectives and our progress toward fulfilling these objectives is paramount to the success of this role. Other responsibilities also include the following:

- Work on an innovative client-server product using Web Services, and more
- Work on the latest technologies of .Net 4, WCF, and WPF

The [redacted] representative noted that the position required “the service of an individual with a preferred Bachelor’s degree in a related field and/or relevant experience.”

The Petitioner also submitted a letter, dated August 10, 2015, from a representative of [redacted] [redacted] who stated that the Beneficiary will work in the position of senior .Net Consultant and would report to her on-site during the project. Attached to the letter as Exhibit 1 is purchase order 29797, for the Beneficiary’s services as a .Net Developer revising the end date of the work to September 1, 2018.

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. The record in this matter includes only generalized descriptions of the Beneficiary’s proposed duties. The Petitioner’s initial description sets out the technological tools and programs the Beneficiary will use in the proposed position, but does not submit a description of duties that is sufficient to convey the actual tasks the Beneficiary will perform on a day-to-day basis. Moreover, the Petitioner does not establish that using these tools and applications require a bachelor’s degree in specific specialty, rather than certifications or other vocational training.

The Petitioner also noted that the Beneficiary will work off-site on projects for a third party, but did not submit information regarding the Beneficiary’s specific duties from the end client. Although the end client submitted a letter on appeal to describe the Beneficiary’s duties, the general description provided in the letter does not convey the substantive nature of those duties. The record does not include the expectations of the end client regarding the actual duties necessary to complete its project(s). Although the record also includes the mid vendor’s description of proposed duties, this description is also broad and the duties do not specifically relate to any particular aspect of any of the end client’s projects. Accordingly, we are unable to discern the nature of the actual position and whether the proffered position 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.

The record also includes inconsistent information regarding the salary and expected training to perform the duties of the proffered position. For example, the Petitioner provides several different salaries for the proffered position, ranging from \$50,315 to \$83,200 per annum. Additionally, the mid vendor references the proffered position as a senior .Net Developer, which conflicts with the Petitioner's attestation on the LCA that the position warrants only a Level I (entry) wage.<sup>3</sup> Further, the Petitioner, in its advertisement for the proffered position, indicates that the position requires five years of experience. This also conflicts with the Petitioner's attestation on the LCA that the position is an entry-level (Level I) position. We also observe that the end client prefers, but does not require, a bachelor's degree in a related, but unspecified field and the mid vendor requires a bachelor's degree in a related, but unspecified field. Preference for a degree is not synonymous with a requirement for a degree. Neither the end client nor the mid vendor indicates that five years of experience is necessary to perform the duties of the position, contrary to the Petitioner's advertisement. Based on these inconsistencies, it is not possible to ascertain the level of the Beneficiary's proposed responsibilities and whether he will be compensated at the most accurate prevailing wage.

The broad descriptions of the Beneficiary's proposed tasks are also insufficient to convey an understanding of the Beneficiary's role and responsibility in working for the end client in this matter. We are unable to ascertain the scope and complexity of the offered employment. The Petitioner does not sufficiently define how any of the generally stated tasks entail the need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty.

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<sup>3</sup> The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Thus, in designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the Beneficiary is only required to have a basic understanding of the occupation and carries expectations that the Beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered.

Upon review of the totality of the record, it is not evident that the proposed duties as described, and the position that they comprise, merit recognition of the proffered position as qualifying as a specialty occupation. To the extent that they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the Beneficiary in the performance of the proffered position for the entire period requested. The overall responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the Petitioner's or its end client's operations. Thus, the Petitioner has not demonstrated how the performance of the duties of the proffered position, as generally described, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. As the Petitioner has not adequately described the specific duties of the proffered position, the Petitioner's assertions regarding the education required to perform the duties are not substantiated.<sup>4</sup>

The Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, which therefore precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies for classification as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

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<sup>4</sup> We further observe that the Petitioner's assertion regarding the educational level required for the proffered position is listed in its advertisement for a generic programmer analyst. The Petitioner's advertisement indicates that a spectrum of degrees, including a Bachelor's degree in Computer Science, Engineering, or Business Administration – a degree of general applicability, or a related field, are all acceptable degrees to perform the duties of the position. However, the requirement of a bachelor's degree in business administration is inadequate to establish that a position 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. 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 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).

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#### IV. CONCLUSION

The burden is on the Petitioner to show 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of V-, Inc.*, ID# 16084 (AAO Apr. 12, 2016)