



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

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

MATTER OF D.C.H-C-, INC

DATE: APR. 13, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an intermediate care facility, seeks to temporarily employ the Beneficiary as a rehabilitation counselor 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, Vermont Service Center, denied the petition. The Director concluded that the evidence is insufficient to establish that the Beneficiary is qualified to work in the proffered position.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred in that the evidence is sufficient to establish that the Beneficiary is qualified to work in the proffered position.

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

**I. SPECIALTY OCCUPATION**

As a preliminary matter, we note that a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. Cf. *Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

In this case, the Director did not address whether the proffered position is a specialty occupation. However, we note that the Petitioner's requirements for the position do not qualify the proffered position as a specialty occupation. Specifically, the Petitioner's claimed entry requirement of at least a bachelor's degree in "Education or Social Sciences or in related field or the equivalent

combination of education, training, and/or experience with some positions requiring a minimum of a Bachelor's degree" for the proffered position, without more, is inadequate to establish that the proposed position qualifies 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 philosophy and engineering, 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. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, 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.

The Petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in education or social science. The issue here is that it is not readily apparent that these two fields of study are closely related or that the field of education or social science is directly related to the duties and responsibilities of the particular position proffered in this matter.

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. As explained above, 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. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

The evidence of record does not establish how these two dissimilar fields of study form either a body of highly specialized knowledge or a specific specialty, or its equivalent, and the Petitioner asserts that the job duties of this particular position can be performed by an individual with a bachelor's degree in either, unrelated field. Without more, the Petitioner's statement alone indicates that the proffered position is not in fact a specialty occupation.

However, for the limited purpose of adjudicating the beneficiary-qualification issue upon which the Director denied the petition, we will assume that the proffered position is a specialty occupation.

## II. BENEFICIARY'S 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.

#### B. The Proffered Position

The Petitioner's letter of support dated March 31, 2014, provided the following "typical duties" of the proffered position as a rehabilitation counselor:

Devise, implement and supervise active treatment for 8/16 developmentally disabled individuals in the Intermediate Care Facilities for Mentally Retarded (ICF/MR).

Monitor program on all shifts and makes recommendations to Program Coordinator/Director and or Therapist's [sic] as appropriate. Review each individual's IPP monthly to ascertain whether the plan was followed. Monitor data collection daily and notifies deficiencies to direct care staff and makes plan of correction. Writes quarterly progress notes after quarterly reviews and files them by the 10th of the following month. Visits day program at least on a quarterly basis and includes the report in the quarterly review record. Submits written requests for purchases, repairs to the maintenance department to ensure general upkeep of facilities.

Upholds individual's rights adhering to policies and procedures, conducts immediate investigation of all incidents, refer unusual incidents to the Program Coordinator/Director.

Monitors and schedules medical appointments for individuals and notifies the schedule personal [sic] a week in advance. Orients the medical appointment person with the individuals' medical concern. Monitors the individual's folder weekly and files materials in an orderly fashion.

(b)(6)

*Matter of D.C.H-C-, Inc*

In the same letter, the Petitioner states that the proffered position requires “a Bachelor’s Degree in Education or Social Sciences or in related field or the equivalent combination of education, training, and/or experience with some positions requiring a minimum of a Bachelor’s degree.”

### C. 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 Beneficiary is qualified to work in the proffered position.

First, we find that the Petitioner has not established that a license is not required to practice in the proffered position. On several occasions, USCIS requested that the Petitioner submit specific evidence on this matter, but the Petitioner did not adequately respond to the request.

For example, in a request for evidence (RFE) dated July 28, 2014, the Director stated:

The proffered position appears to be based on an occupation that may require a license for an individual to fully perform the duties of the occupation. Submit the license or evidence from the appropriate licensing authority that the Beneficiary may fully perform the duties of the position with no license.

In response, the Petitioner stated, *inter alia*: “The employer does not require a license for this position.”

On appeal, we issued an RFE, dated December 23, 2015, stating:

The Director requested that the Petitioner either provide the Beneficiary’s license to practice in the proffered position in the [REDACTED] or provide evidence from the appropriate licensing authority showing that the proffered position does not require licensure.

Your reply to that request was not responsive. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(4). We are, however, providing you an additional opportunity to respond to the request in the RFE.

Please provide either (1) evidence that the Beneficiary is licensed to work in the proffered position, and has had the appropriate license since April 1, 2014, when the visa petition was submitted, or (2) evidence from the appropriate licensing authority in the [REDACTED] that the proffered rehabilitation counselor position does not require licensure in the [REDACTED]

In response to our request, the Petitioner stated: “[Department of Health Care Finance] regulations do not require a license for the position of Rehabilitation Counselor at [the Petitioner’s] Residential

(b)(6)

*Matter of D.C.H-C-, Inc*

facilities. Accordingly, neither [redacted] Government nor [the Petitioner] requires a license for the Professional position of Rehabilitation Counselor.”<sup>1</sup> However, the Petitioner did not submit evidence to substantiate its statement. We note that “going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.” *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Therefore, we find that the Petitioner has not adequately responded to our request for evidence on an issue material to the appeal, and so has not established that a license is not required to practice in the proffered position. “Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition].” 8 C.F.R. § 103.2(b)(14).

However, assuming for the sake of argument that a license is not required to practice the proffered position as described in the record, we will consider whether the Beneficiary has obtained a bachelor’s or higher degree, or its equivalent, in a specific specialty that a specialty-occupation position would require within the occupational category with which the Petitioner identified the proffered position.

Specifically, the Petitioner is seeking the Beneficiary’s services as a rehabilitation counselor. While a rehabilitation counselor does not, by virtue of its occupational classification alone, qualify as a specialty occupation based on the information provided in the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)*, it appears that a specialty-occupation-level rehabilitation counselor would require a master’s degree in rehabilitation counseling or a related field.<sup>2</sup>

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<sup>1</sup> We note that Code of [redacted] Municipal Regulations for Professional Counseling § 6699.1 defines a “professional counselor” as a “person licensed under the Act to practice professional counseling.” The Code also defines “practice of professional counseling” as engaging in counseling activities, for compensation, by a person who represents, by title or description of services, that he or she is a ‘professional counselor’ or ‘licensed professional counselor,’ and includes the processes of: (a) conducting assessments for the purpose of determining treatment goals and objectives; (b) assisting clients through a professional relationship to achieve effective mental, emotional, physical, social, educational, or career development and adjustment throughout the life span; and (c) using counseling treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral conditions and associated difficulties which interfere with functional wellness. [redacted] Mun. Regs. tit. 17, § 6699.1. While the record contains insufficient evidence regarding whether or not the proffered position is a “professional counselor” position within the meaning of the Code of [redacted] Municipal Regulations for Professional Counseling, the proposed duties as described in the record reasonably raise that issue, which Petitioner has not resolved.

<sup>2</sup> See U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Rehabilitation Counselors,” <http://www.bls.gov/ooh/community-and-social-service/rehabilitation-counselors.htm#tab-4> (last visited Apr. 11, 2015).

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 USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the statutory and regulatory requirements, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that it’s the proffered position qualifies as a specialty occupation.

An evaluation of educational credentials in the record states that the Beneficiary's foreign education is equivalent to a bachelor's degree in education and a master's degree in history awarded in the United States.<sup>3</sup> However, as reflected in our earlier discussion of the asserted occupation, such credentials would not be sufficient to qualify the Beneficiary as a rehabilitation counselor at a specialty-occupation level.<sup>4</sup>

For the reasons discussed above, we conclude that the Petitioner has not satisfied any of the beneficiary-qualification criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) through (h)(4)(iii)(C)(3).

This leads us to consider the fourth criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(C), by which a beneficiary may qualify for service in a specialty occupation through evidence establishing that, though lacking a U.S. degree or its foreign-degree equivalent in the specialty, the beneficiary possesses the equivalent of the required U.S. degree by virtue of both (1) education, specialized training, and/or progressively responsible experience in the pertinent specialty that is equivalent to 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);

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<sup>3</sup> We note that while the record contains a document that the Beneficiary "has been admitted to the degree of Master of Arts," there is insufficient evidence to substantiate that the Beneficiary actually received a degree.

<sup>4</sup> As discussed, the Petitioner asserted that the proffered position requires "a Bachelor's Degree in Education or Social Sciences or in a related field or the equivalent combination of education, training, and/or experience with some positions requiring a minimum of a Bachelor's degree." The Petitioner's educational requirements for the proffered position are inconsistent with the *Handbook's* requirements for rehabilitation counselor; therefore, the Petitioner has not established that proffered position is a rehabilitation counselor position within the meaning of the *Handbook*.

In that event, the visa petition would be denied for not corresponding to the labor condition application (LCA). The LCA submitted to support the visa petition indicates that the proffered position corresponds to Standard Occupational Classification (SOC) code 21-1015, "Rehabilitation Counselors." The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the Beneficiary.

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;<sup>5</sup>
- (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 . . . .

The record contains evidence of Beneficiary's work experience and training; however, the Petitioner has not submitted an evaluation of the Beneficiary's education and work experience to establish that the Beneficiary possess the equivalent of a U.S. bachelor's degree in any specific specialty.

The Petitioner has not satisfied any of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1) through (h)(4)(D)(4). That is, the evidence of record has not established that the Beneficiary has achieved the equivalent of the type of U.S. degree required to perform as a rehabilitation counselor operating at a specialty-occupation-level, that is, either by (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 with a program for granting such credit based on an individual's training and/or work experience; (2) results of recognized college-level equivalency examinations or special credit programs; (3) evaluation of education by a reliable credentials evaluation service specializing in evaluating foreign educational credentials; or by (4) certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to those who have achieved a certain level of competence in the specialty.

Next, we see that the evidence of record does not establish that the Beneficiary has achieved the multiple requirements that the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(5) specifies for USCIS to render a separate determination that a beneficiary qualifies to perform the services of a particular specialty occupation by virtue of both his or her "education, specialized training, and/or work experience" and also "recognized expertise" in the pertinent specialty occupation.

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 USCIS application and determination, and that, also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceedings satisfies all of

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<sup>5</sup> The Petitioner should note that, in accordance with this provision, we will accept a credential evaluation service's evaluation of *education only*, not training and/or work experience.

(b)(6)

*Matter of D.C.H-C-, Inc*

the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), including the requirement for a type of recognition of expertise in the specialty occupation.)

This criterion provides, *inter alia*:

[I]t must be clearly demonstrated [1] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] 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 [3] 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<sup>6</sup>;
- (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.

The record of proceedings includes former-employer letters and certificates. However, the record does not contain substantial information regarding the Beneficiary's training and work experience. For example, a letter dated April 3, 2006, from [redacted] states that the "[Beneficiary] has been associated with [redacted] for the last 17 years." The letter states that the Beneficiary is "an excellent teacher with a smiling face" and "is very popular with students." Another letter, dated November 26, 2002, states that "[the Beneficiary] is a resourceful teacher and always seeks novel techniques." Another letter, dated November 28, 2002, states that the "[Beneficiary] participated in the Creativity Workshop . . . for special needs children." The certificate recognized the Beneficiary's "time and effort put in as a volunteer from February 2001 to March 2004 in the slow learners section."

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<sup>6</sup> *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. 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. 8 C.F.R. § 214.2(h)(4)(ii).

The letters do not provide substantive information about the specific work that the Beneficiary performed, such as, for instance, the level of responsibility that she exercised, the extent to which she was supervised, the latitude of independent judgment that the Beneficiary may have been allowed to exercise, or the types and levels of any substantive knowledge that the Beneficiary may have applied in the area of teaching or counseling. Nor do the letters or the certificate of appreciation demonstrate that the Beneficiary theoretically and practically applied specialized knowledge required by rehabilitation counselor position at the specialty occupation level, or that the Beneficiary worked with peers, supervisors, or subordinates with a degree or its equivalent in the specialty occupation.

In any event, the evidence of record is not sufficient to satisfy the requirements at 8 C.F.R. § 214.2(h)(4)(D)(5) for achieving USCIS recognition of periods of education, specialized training, and/or specialized work experience as equivalent to years(s) of U.S. college-level training that a beneficiary lacks in the pertinent specialty. That is, the record of proceedings lacks clearly demonstrable evidence<sup>7</sup> that the Beneficiary's "training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation" and "was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation."

Further, as reflected subparagraph (A)(1) of the regulation at 8 C.F.R. § 214.2(h)(4)(iv), *General documentary requirements for H-1B classification in a specialty occupation*, submissions from former employers, or recognized authorities, as to a beneficiary's recognition and expertise "shall specifically describe the beneficiary's recognition and ability in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information." The record does not include such documentation, or for that matter, any documentary evidence which would satisfy the requirement at 8 C.F.R. § 214.2(h)(4)(D)(5) for recognition of the Beneficiary's expertise in the specialty, rehabilitation counseling.

In sum, for the reasons discussed above, we conclude that the evidence of record has not established that the Beneficiary is qualified to serve in a rehabilitation counselor specialty-occupation position.

### III. 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.

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<sup>7</sup> The regulation expressly requires that satisfaction of each of its requirements "must be clearly demonstrated."

*Matter of D.C.H-C-, Inc*

**ORDER:** The appeal is dismissed.

Cite as *Matter of D.C.H-C-, Inc*, ID# 14423 (AAO Apr. 13, 2016)