



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

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

MATTER OF Q-E-A-

DATE: APR. 26, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an architectural services company, seeks to temporarily employ the Beneficiary as an “architectural designer” 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 Petitioner did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by finding that the proffered position is not a specialty occupation.

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

I. 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. PROFFERED POSITION

In the initial letter of support, the Petitioner provided a general description of the job duties for its architectural designer position. In response to the Director’s request for evidence, the Petitioner expanded the duties of the proffered position as follows:

1. **(20%) Communicate with client representatives and project stakeholders in a professional, service-oriented manner, clearly representing technical, logistical, and aesthetic issues.**
  - Develop outline content and associated graphic presentation using Adobe Indesign software to be presented to clients as well as public community meetings;
  - Design and present content consisting of plans, diagrams, 3D views, program analysis, site analysis and narratives corresponding to each concept.
2. **(15%) Manage workflow for specific tasks including door and window schedules, interiors construction, materials and finishes selection, space utilization, circulation, and furnishing layouts.**
  - Organize and maintain project team communication infrastructure, utilizing the Newforma content management systems.

- 3. (22.5%) Work as part of a collaborative interdisciplinary design team, communicate in graphic, written, and oral form to convey both design and technical ideas and strategies.**
  - Identify and analyze design precedents that relate to design approach;
  - Communicate design explorations and resolutions to meet the design imperatives;
  - Operate Building Information Modeling software (Revit, Sketchup) to create 3D models of existing buildings and new interventions, floor plans, furnishings layouts for public institutional buildings;
  - Conduct product and furniture research for the proposed construction and design;
  - Create specification packages for furniture and interior finishes;
  - Translate technical and specification requirements into three-dimensional forms, documenting element materiality and construction logic;
  - Operate Building Information Modeling software (Revit) to organize and create construction documents.
  
- 4. (22.5%) Investigate and collaborate on design trade-offs and decisions with the project team.**
  - Utilize in the 3D model and construction documents to integrate the architectural design with the engineering disciplines;
  - Ensure that building systems locations and access requirements are compatible during construction as well as future operations;
  - Help identify spatial and technical conflicts between building elements and systems, and participate in the development and implementation of integrated solutions.
  - Draft detailed plans and sections of the proposed architectural work based on preliminary concepts, sketches, engineering calculations, specification sheets and other data.
  
- 5. (5%) Understand and document codes and requirements as they apply to proposed work.**
  - Analyze building codes, occupancy guidelines, and site requirements to determine their effect on architectural designs.
  
- 6. (15%) Ensure accurate documentation of project scopes through communications, drawings, specifications, and diagrams.**
  - Review and confirm the accuracy of drawings and corresponding technical schedules;
  - Verify that configurations and construction meet code, life safety, and accessibility requirements;
  - Create outlines of the proposed scope of work for the purpose of generating a cost estimate by professional cost estimators.

According to the Petitioner, the position requires highly specialized knowledge in architecture, or a closely related field, and the attainment of a bachelor's degree or higher, or its equivalent.

### 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 satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, qualifies as a specialty occupation.<sup>1</sup> Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

#### A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup>

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Architectural and Civil Drafters" corresponding to the Standard Occupational Classification code 17-3011 at a Level I wage.<sup>4</sup>

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<sup>1</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>2</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position. While we may not discuss every document submitted, we have reviewed and considered each one.

<sup>3</sup> All of our references are to the 2016-2017 edition of the *Handbook*, available at <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

<sup>4</sup> We will consider the Petitioner's classification of the proffered position at a Level I wage (the lowest of four assignable wage levels) in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdcenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf). A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

The *Handbook* subchapter entitled “How to Become a Drafter” states in pertinent part: “Drafters generally need to complete postsecondary education in drafting. This is typically done through a 2-year associate’s degree from a technical institute or community college.”<sup>5</sup>

The *Handbook* does not support the Petitioner’s assertion that a bachelor’s degree is required for entry into this occupation. This passage of the *Handbook* reports that drafters typically need postsecondary education, which can be accomplished through a two-year associate’s degree. The *Handbook* does not, however, indicate that there are any specific degree requirements for these jobs.

On appeal, the Petitioner submits a printout of the Occupational Information Network (O\*NET) OnLine Summary Report for “Architectural Drafters.” The summary report provides general information regarding the occupation; however, it does not support the Petitioner’s assertion regarding the educational requirements for the occupation. For example, the Specialized Vocational Preparation (SVP) rating cited within O\*NET’s Job Zone designates this occupation as 7 < 8. An SVP rating of 7 to less than (“<”) 8 indicates that the occupation requires “over 2 years up to and including 4 years” of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.<sup>6</sup>

Further, the summary report provides the educational requirements of “respondents,” but does not account for 100% of the “respondents.” The respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty.

Thus, the Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

## B. Second Criterion

The second criterion presents two, alternative prongs: “The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong

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<sup>5</sup> For additional information regarding the occupational category “Architectural and Civil Drafters,” see U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2016-17 ed.*, Architectural and Civil Drafters, available at <http://www.bls.gov/ooh/architecture-and-engineering/print/drafters.htm> (last visited Apr. 25, 2016).

<sup>6</sup> For additional information, see the O\*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

contemplates the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

### 1. First Prong

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

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

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals." Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

### 2. Second Prong

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

We reviewed the Petitioner's statements regarding the proffered position; however, in the appeal brief, the Petitioner does not assert that it satisfies this prong of the second criterion. Further, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Thus, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

### C. Third Criterion

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

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To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing the Petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

The Petitioner stated in H-1B petition that it has 68 employees and was established in [REDACTED] (approximately 30 years prior to the filing of the H-1B petition). On appeal, the Petitioner states that in 2014-2015, it has hired ten "new architectural Staff Designers" including the Beneficiary. The Petitioner claims that all of its architectural designers possess at least a bachelor's degree in architecture. In support of its assertion, the Petitioner submitted copies of the academic credentials of six individuals, and the resumes of three individuals.<sup>7</sup>

To begin with, the Petitioner did not provide the total number of people it has employed to serve in the proffered position or any further context as to the reason it limited its past hiring practices to 2014-2015. Consequently, it cannot be determined how representative the Petitioner's statement regarding these individuals is of the Petitioner's normal recruiting and hiring practices.<sup>8</sup>

Further, the Petitioner did not provide the job duties and day-to-day responsibilities of these individuals. For instance, the Petitioner did not submit evidence regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, it is unclear whether these individuals' duties and responsibilities are the same as the proffered position.

Without more, the Petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, it has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

#### D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is

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<sup>7</sup> The Petitioner did not submit evidence establishing that it employs these individuals (e.g., pay statements, tax documents), and their names do not appear on its website as member of its team.

<sup>8</sup> *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (7th ed. 1995).

usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

In support of this criterion, the Petitioner provided a description of the duties of the proffered position and information regarding its business operations. The Petitioner claims that the position is “significantly different than that of a drafter as defined by the [*Handbook*], and the duties are complex enough to require a bachelor’s degree in a specific area, namely architecture.” According to the Petitioner, the position “requires a higher level of knowledge and skills than a normal drafter position” because the Beneficiary will “develop design ideas [and] NOT just to enter designs from other architects into a computer system.” The Petitioner continues by stating that the position is “designed for those who have graduated with at least a bachelor’s degree, but who cannot be licensed as an architect as they need to log a certain number of hours or architectural work under the supervision of a licensed architect.”

The evidence does not, however, support the Petitioner’s assertion. Contrary to the Petitioner’s assertion that the position is a “high level Architectural Drafter position as opposed to an entry-level position,” the Petitioner designated the proffered position on the LCA as a Level I wage level.<sup>9</sup> As discussed earlier, this designation indicates that the proffered position is a low-level, entry position relative to others within the “Architectural and Civil Drafters” occupational category.<sup>10</sup> Further, the Petitioner’s designation on the LCA does not support its analogy of the proffered position to an architectural intern position.<sup>11</sup>

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<sup>9</sup> The Petitioner’s designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor’s degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor’s degree in a specific specialty, or its equivalent. That is, a position’s wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

<sup>10</sup> A Level IV (fully competent) position is designated by DOL for employees who “use advanced skills and diversified knowledge to solve unusual and complex problems” and requires a significantly higher wage. For additional information regarding wage levels as defined by DOL, 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).

<sup>11</sup> According to DOL guidance, a statement that the job offer is for an internship is an indicator that a Level I wage should be considered. *Id.* Thus, the Petitioner’s designation of the proffered position as a Level I, entry-level, position under the “Architectural and Civil Drafters” classification indicates that it is an entry-level *drafter* position, not an entry-level or internship-level *architect* position. The Petitioner simultaneously attempts to distinguish the proffered position from “normal” drafter positions by its designing duties, but at the same time, asserts that the Beneficiary is not licensed and thus the proffered position is not an architect position.

The Petitioner was required to provide, at the time of filing the H-1B petition, an LCA certified for the correct occupational category and wage level in order for it to be found to correspond to the petition. To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, by allowing that petitioner to simply submit an LCA for a different occupational category or wage level at a lower prevailing wage than

While the Petitioner may believe that the proffered position meets this criterion of the regulations, it has not sufficiently demonstrated how the position as described requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the tasks. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses is required. The evidence in the record does not refute the *Handbook's* information to the effect that a two-year associate's degree is sufficient for entry into the occupation. Without more, the record lacks sufficiently detailed information to distinguish the level of judgment and understanding necessary to perform the duties as specialized and complex.

In addition, the Petitioner claims that the Beneficiary is well qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

#### IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation. 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 Q-E-A-*, ID# 17289 (AAO Apr. 26, 2016)

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the one that it claims it is offering to the beneficiary.