



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

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

MATTER OF C-C-, LLC

DATE: AUG. 2, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a business consulting and technology solutions firm, seeks to temporarily employ the Beneficiary as a “consultant – business intelligence architect” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 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 proffered position is not a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence asserts that the Director erred in concluding 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 H-1B petition, the Petitioner stated that the Beneficiary will serve as a “consultant – business intelligence architect.” In its support letter, the Petitioner stated that the Beneficiary will perform the following duties:

- Design development, testing, and implementation of new software and upgrades;
- Have a mastery of the Microsoft BI stack, including SSIS;
- Understand the technical concepts involved in ETL development; and
- Use requirements to extract, transform, and load data using a variety of tools[.]

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Software Developers, Applications” corresponding to the Standard Occupational Classification code 15-1132.¹

¹ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection 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 he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he 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

According to the Petitioner, the position requires a bachelor's degree or its equivalent in computer science, business, or a related field.

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. Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

A. Lack of a Requirement for a Bachelor's Degree in a Specific Specialty, or the Equivalent

The Petitioner's claimed entry requirement of at least a bachelor's degree in "computer science or business" for the proffered position, without more, is inadequate to establish that the proposed 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 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. 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). For this reason alone, the proffered position is not a specialty occupation.

The Petitioner's acceptability of degrees from two apparently unrelated fields – computer science and business – constitutes additional evidence that the proffered position is not a specialty occupation. In general, provided the specialties are closely related, e.g., chemistry and biochemistry,

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.*

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

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.

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

Here and as indicated above, the Petitioner, who bears the burden of proof in this proceeding, has not established either (1) that computer science and business are closely-related fields or (2) that the field of business is directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, under the Petitioner's own standards.

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 indicates further that the proffered position is not in fact a specialty occupation.

B. Substantive Nature of Duties

In addition, we cannot find that the proffered position qualifies as a specialty occupation because the Petitioner has not satisfied any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Specifically, the Petitioner has not established the substantive nature of the actual duties that the Beneficiary would perform, which precludes an analysis of whether the Petitioner has satisfied any of the referenced criteria.

For example, the Petitioner presented the duties comprising the proffered position in terms of relatively abstract and generalized functions. The job descriptions lack sufficient detail and concrete explanation to establish the substantive nature of the work that the Beneficiary would actually perform. For example, the stated job duty of "us[ing] requirements to extract, transform, and load data" explains neither the "requirements" nor the type of "data" with which the Beneficiary would work. Nor does the Petitioner explain the types of "new software" and "upgrades" that the Beneficiary would design, test, and implement. In any event, the job description submitted at the time of filing provides us with little idea of what the Beneficiary would actual be doing. Furthermore, more detailed, the additional job duties submitted in response to the request for evidence (RFE) and on appeal also do not sufficiently demonstrate the Beneficiary's duties. As will be explained below, the documentation of which they are a part contains numerous evidentiary deficiencies.

Another problematic aspect of the Petitioner's job description is the fact that many of the Petitioner's assertions regarding the proffered duties appear inconsistent with the wage level designated in the LCA. Again, in designating the proffered position at a Level I wage, the Petitioner attested that it is an entry-level position in which: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. According to DOL, "[s]tatements 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." U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

For example, the Petitioner stated in an email that "most of [the Beneficiary's] work has been independent." The Petitioner describes the Beneficiary's job duties as "sophisticated," that his time "will be spent on high-level duties" and that no time would be spent performing "low-level duties," and refers to his duties as "sophisticated." The Petitioner also references the "specialized and complex" nature of the position and its duties repeatedly.³ Finally, the Petitioner claimed that the Beneficiary has

³ In addition, the record contains several job vacancy announcements advertising positions claimed by the Petitioner to

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worked as a “lead developer” on an internal project. The Petitioner’s designation of the proffered position as a Level I, entry-level position is inconsistent with these and other stated duties, and in addition to calling into question the reliability of the Petitioner’s job description also raises additional questions regarding the actual, substantive nature of the proffered position.⁴

Finally, the Petitioner has also not established the nature and scope of the Beneficiary’s employment due to its inability to demonstrate knowledge of which projects to which the Beneficiary would be assigned, and the proffered duties that the Beneficiary would perform for each project, at the time the petition was filed.

For example, the Petitioner indicated in the Form I-129 and LCA that there would be only two possible work locations: (1) its own office in [REDACTED] Ohio, and/or (2) at a client site in [REDACTED] Ohio. The Petitioner also submitted a statement of work (SOW) issued for work to be performed for its client [REDACTED]. However, in response to the request for additional evidence (RFE), the Petitioner stated that the Beneficiary would no longer work on the project for [REDACTED] and that he would instead “remain assigned to [REDACTED] for the foreseeable future.” The SOW naming the Beneficiary in conjunction with a project to be performed for [REDACTED] was executed after the H-1B petition was filed. On appeal, the Petitioner submits a letter from [REDACTED] which states that the Beneficiary will provide services “from time-to-time at our offices” in [REDACTED] Ohio. The Petitioner also claims on appeal that “[w]hen we staff a project, we assign a team that includes on-site managers [sic] who supervise other [Petitioner] employees on-site.”

On appeal, the Petitioner contends that changing the project after the petition was filed should not matter because, regardless of project, the Beneficiary “is a member of the Data & Analytics team focused on Business Intelligence” and the team “has current projects underway or in the bidding stage that are worth more than \$8.6 million.” However, while the Petitioner may have multiple projects available to which the Beneficiary could be assigned even if the current assignment were to end, it is not clear that each project would entail precisely the same duties and minimum qualifications. For example, in response to the Director’s concern that the Beneficiary may not still be employed in the same position proffered in the petition, the Petitioner stated regarding an internal project that the Beneficiary “was the lead developer on this project from May 2015 through August

be “parallel” to the one proffered here. We note that every advertised position requires work experience – some as much as five years. If these positions are in fact “parallel” to the one proffered here, then it is unclear how the proffered position could be an entry-level position in which the Beneficiary would perform routine tasks that require limited, if any, exercise of judgment.

⁴ To the extent the Petitioner’s assertions are correct they raise the question of whether the LCA corresponds to and supports the H-1B petition. We will not discuss this issue further in our decision except to note that if the Petitioner is able to overcome our grounds for dismissing the appeal at some point in the future, USCIS would have to explore the issue before approval of the petition could be considered.

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2015”⁵ Therefore, although the Beneficiary may work in a position bearing same title and with the same team throughout the duration of the petition approval, the Petitioner has not demonstrated that the Beneficiary would perform the proffered duties on every project to which he would be assigned.⁶

Additionally, the Beneficiary’s role in the project with [REDACTED] is expected to last 10 weeks, according to the SOW.⁷ However, the Petitioner requested a validity period from October 1, 2015, through August 31, 2018. On appeal, the Petitioner requests that the petition be approved for a period of one year, or through September 30, 2016 if it cannot approve for the entire period of requested employment.⁸ However, the Beneficiary’s 10-week assignment has passed, and the Petitioner has not submitted evidence that the project with [REDACTED] would be extended beyond June 30, 2016. Even if the Petitioner could establish that the Beneficiary would be assigned to the project with [REDACTED] through June 30, 2016, we would still find that the job description lacks sufficient detail and concrete explanation to establish the substantive nature of the work within the context of this project, and the associated applications of specialized knowledge that their actual performance would require. For example, the SOW states that the Beneficiary’s tasks include “development work done during each iteration” and the Beneficiary would work “hand in hand with the BI Architect to implement artifacts that the Architect designs.” There is no further explanation as to what particular tasks the Beneficiary will perform on a day-to-day basis (e.g., what specific development work and artifact implementation activities are involved), the complexity of such tasks, and the substantive application of knowledge involved. Additionally, the general description does not delineate the demands, level of responsibilities and requirements necessary for the performance of these duties.

⁵ Again, this claim – that the Beneficiary worked as a lead developer (and implicitly, that he could possibly do so again at some point during the nearly three-year period of employment requested in the H-1B petition – appears to conflict directly with the Petitioner’s Level I wage-level designation in the LCA.

⁶ 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 individual, 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 or 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.

⁷ Although the Petitioner submits an email from [REDACTED] indicating that the project will likely continue through June 30, 2016, the email does not specifically reference the Beneficiary or his role on the project. The letter from [REDACTED] dated August 27, 2015, states only that the Beneficiary would be providing services from time-to-time on the project through the end of 2015, with the possibility of an extension. However, no other evidence was provided to establish that the extension of the Beneficiary’s assignment to [REDACTED] project through June 30, 2016, had been confirmed.

⁸ In support of its request for a validity period of one year, the Petitioner cites to a 2010 statement made by the Vermont Service Center (VSC) at a stakeholder engagement that “to accommodate third party work assignments that are documented for less than one year, USCIS will provide a one-year approval.” However, the Petitioner in this case has not made the initial demonstration that the proffered position is a specialty occupation. Moreover, the statement to which the Petitioner cites was made in reference to extension petitions, which is not the case here.

The Petitioner claims on appeal that it is not a token employer and that when one of its employees works at a client site, the individual is assigned to a team supervised by the Petitioner. However, even if we did not question this assertion, we would still be compelled to find that the Petitioner had not submitted sufficient evidence to establish that such work would constitute a specialty occupation requiring at least a bachelor's degree in a specific specialty. As discussed previously, because the Petitioner did not demonstrate that it normally requires at least a bachelor's degree in a *specific specialty* for the proffered position, and because the job description lacks sufficient detail, the Petitioner has not established that the proffered position is a specialty occupation. Further, while the Petitioner's claim that the Beneficiary's position and duties will not change for the duration of the petition is noted, its prior assignment of the Beneficiary as a project lead undermines it.

For all of these reasons, we cannot determine the nature and scope of the Beneficiary's employment. The record lacks evidence sufficiently concrete and informative to demonstrate: (1) the actual work that the Beneficiary would perform; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

The inability to establish the substantive nature of the work to be performed by the Beneficiary consequently 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 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 as a specialty occupation for this additional reason.

IV. DUE PROCESS

On appeal, the Petitioner contends that the Director did not afford it an opportunity to address the concerns stated in the denial by issuing an RFE, and that its rights to procedural due process were therefore violated. However, there is no requirement that USCIS issue an RFE, or to issue an RFE pertinent to a ground later identified in the decision denying the visa petition. The regulation at 8 C.F.R. § 103.2(b)(8) permits the Director to deny a petition over a Petitioner's inability to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the Director. Further, even if the Director had erred as a procedural matter in not issuing an RFE relative to the Petitioner's lack of evidence to establish the proffered position as a specialty occupation, it is not clear what remedy would be appropriate beyond the appeal process itself. The Petitioner has, in fact, supplemented the record on appeal. Therefore, it would serve no

useful purpose to remand the case simply to afford the Petitioner yet another opportunity to supplement the record with new evidence. We conduct appellate review on a *de novo* basis.

We further note that with respect to a constitutional due process challenge, we have no authority to entertain constitutional challenges to a USCIS action. *Cf. Matter of Salazar-Regino*, 23 I&N Dec. 223, 231 (BIA 2002) (BIA lacks authority to rule on constitutionality of statutes it administers). Even if we had the authority to entertain constitutional challenges, the Petitioner has not shown that any violation of the regulations resulted in “substantial prejudice” to the petitioning company or the Beneficiary. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that a foreign national “must make an initial showing of substantial prejudice” to prevail on a due process challenge).

V. 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. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of C-C-, LLC*, ID# 17541 (AAO Aug. 2, 2016)