



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

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

MATTER OF P-&A-, LLC

DATE: AUG. 8, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a creditor rights law firm, seeks to temporarily employ the Beneficiary as a “law clerk” 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 Petitioner had not established 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 asserts that the Director erred in her decision.

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

The Petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the Beneficiary will work full-time as a law clerk. In response to the Director’s request for evidence (RFE), the Petitioner submitted a detailed description of the proffered position, as follows (verbatim):

Researches, synthesizes, analyzes and applies primary, secondary and tertiary law sources such as statutes, recorded judicial decisions, legal articles, treaties, Constitutions, and authoritative legal codes. (20%)

Prepares, drafts, proofs, reviews and timely files legal documents such as: Affidavits, briefs; pleadings; motions; discovery requests; appeals; contracts; agreements; memorandums; certificates of judgments; Entries; and, Orders for review, approval, and use by Lawyers and Courts. (15%)

Appraises, examines and reviews debtors’ assets, including real and personal property, for pre-suit review and post-judgment execution recommendations to the Lawyers. (10%)

Investigates facts and applies the relevant law in a given case file to determine causes of action and to prepare a case filing accordingly. (10%)

Directs the delivery of subpoenas to witnesses, 3rd parties and/or parties to an action. (8%)

Timely communicates (within twenty-four (24) hours at a maximum) with clients and Lawyers in response to all queries and requests. (12%)

Manages the Bankruptcy portfolio. Monitors and prepares necessary Bankruptcy filings, drafts responses to Objections and Lien Avoidances, drafts Complaints to determine dischargeability, reviews files to determine dischargeability and makes recommendations to the Lawyer. (2%)

Makes recommendations for suit or closing to attorneys. Applies applicable statutes to fact to determine likelihood of litigation success and researches claimant's assets and liabilities to determine if collection is likely to be successful. (10%)

Assists with the Workers Compensation portfolio. Analyze complex medical litigation files, prepare pleadings, research and draft complex legal briefs. (2%)

Timely and accurately communicates with law firm clients and Courts. (10%)

Other duties may be assigned. (1%)

According to the Petitioner, the proffered position requires at a minimum a master's degree in law or a juris doctor (JD) degree.

III. ANALYSIS

On appeal, the Petitioner asserts that the Director erred in its decision concluding that that the Petitioner had not established eligibility for the H-1B petition to be approved. 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.¹ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Judicial Law Clerks" corresponding to the Standard Occupational Classification (SOC) code 23-1012.³ The U.S.

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

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.

³ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will

Department of Labor's (DOL) *Occupational Outlook Handbook* states that judicial law clerks "[a]ssist judges in court or by conducting research or preparing legal documents. Excludes 'Lawyers' (23-1011) and 'Paralegals and Legal Assistants' (23-2011)."⁴ However, the evidence of record does not support the assertion that the Beneficiary will be assisting a judge. In fact, the Petitioner states on appeal that the proffered position "is not for a Judicial Law Clerk," but for a law clerk position. The Petitioner further states that there is no corresponding SOC code for the position of "law clerk," and claims that the occupation of judicial law clerk as contemplated under SOC code 23-1012 was the closest occupation to the proffered position.

Upon review, we find that the Petitioner has not provided sufficient evidence to demonstrate that its law clerk position has the same or similar duties, tasks, knowledge, work activities, etc. that are generally associated with "Judicial Law Clerks." As the Petitioner has not demonstrated that the proffered position falls under the occupational category of "Judicial Law Clerks," we will not further address this occupational category as it is not relevant to this proceeding.

We will now review the record of proceedings in its entirety to determine whether the proffered position as described otherwise qualifies a specialty occupation.

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.

It is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria. In such case, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

consider this selection in our analysis of the position. 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. 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://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

⁴ For additional information regarding the occupational category "Judicial Law Clerks," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-2017 ed., Judicial Law Clerks, available at <http://www.bls.gov/oes/current/oes231012.htm> (last visited Aug. 3, 2016).

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We acknowledge the Petitioner's submission of the Occupational Information Network (O*NET) OnLine Summary Report for the "Judicial Law Clerks" occupational category in support of the assertion that the occupation, and the proffered position by extension, requires at least a bachelor's degree, or its equivalent, for entry into the occupation. However, as previously discussed, the Petitioner has not demonstrated that the proffered position is akin to that of a judicial law clerk as described by the O*NET summary report. Therefore, the O*NET information submitted by the Petitioner is not probative of the proffered position's being a specialty occupation.

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 contemplates 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.

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide 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 indicating that any professional association of paralegal and legal assistants has made a degree a minimum entry requirement. Furthermore, the record of proceedings does not contain 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" in parallel positions.

In support of this criterion, the Petitioner submitted copies of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner's reliance on the job announcements is misplaced. First, we note that some of the job postings do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is a 17-person law firm, whereas the advertising organizations include:

- [REDACTED] Illinois' Department of Law;

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- [REDACTED]
- [REDACTED] and [REDACTED]
- [REDACTED] – an [REDACTED] company with [REDACTED] and [REDACTED] worldwide.

Furthermore, one of the postings appears to be for a staffing agency that provides no information regarding the hiring employer. The Petitioner did not supplement the record of proceedings to establish that the advertising organizations are similar to it.

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Moreover, many of the advertisements do not appear to be for parallel positions. Furthermore, some of the postings do not include the duties and responsibilities for the advertised positions. Thus, it is not possible to determine important aspects of the jobs, such as the day-to-day responsibilities, complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Therefore, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, none of the postings indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.⁵ The job postings suggest, at best, that although a bachelor's degree is sometimes required for law clerk positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.⁶

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

⁵ As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. *See* section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

⁶ It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that “[r]andom selection is the key to [the] process [of probability sampling]” and that “random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error”).

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. 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.⁷

Upon review of the record, we find that the Petitioner did not submit information regarding employees who currently or previously held the proffered position. The record does not establish that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. Thus, the Petitioner 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 usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

⁷ 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.

In support of this criterion, the Petitioner provided descriptions of the duties of the proffered position and information regarding its business operations. The Petitioner asserts that the proffered position is a highly specialized and complex position. However, the evidence of record does not sufficiently establish that the duties of the proffered position are more specialized and complex than those not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

For instance, the Petitioner states that as a creditor rights law firm, it primarily handles collections and subrogation cases, and claims that the Beneficiary's legal education qualifies her to perform the complex duties associated with the Petitioner's line of work. Nevertheless, the Petitioner has not adequately explained how its particular operations distinguish and elevate the proffered position from other similar positions, particularly as the proffered position has been designated at a Level I wage rate. As discussed earlier, this designation indicates that the proffered position is a low-level, entry position relative to others within the occupational category.⁸

In response to the RFE, the Petitioner highlighted several courses the Beneficiary completed, such as US Legal Writing, Patent Law, Copyright Law, US Contract Law, and Law of the Visual Arts, and notes that her "advanced legal education and classes she took" will enable her to perform the complex duties of the proffered position. The Petitioner, however, does not specifically identify and explain why these courses would be required to perform the duties of the proffered position. 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 duties it may believe are so complex and unique. 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 leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. 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

⁸ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique 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.

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).

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.

IV. NON-CORRESPONDING LCA

Beyond the decision of the Director, the petition cannot be approved because the Petitioner has not provided a certified LCA that corresponds to the petition. As previously noted, the LCA provided in support of the instant petition was certified for employment of a position described as a judicial law clerk under SOC code 23-1012 in O*NET. However, despite the Petitioner's assertions to the contrary, we have found that the proffered position is not such a position. The Petitioner was required to provide at the time of filing an LCA certified for the proper occupational category. USCIS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the LCA is a specialty occupation, and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification. *See* 20 C.F.R. § 655.705(b). Here, the Petitioner has not submitted a valid LCA that has been certified for the proper occupational classification, and the petition cannot be approved for this additional reason.

V. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 P-&A-, LLC*, ID# 17996 (AAO Aug. 8, 2016)