



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

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

MATTER OF C- LLC

DATE: AUG. 31, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an "IT solutions company," seeks to employ the Beneficiary as a "junior systems engineer" 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 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 evidence of record is sufficient to demonstrate that the instant visa petition should be approved.

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 claims that the Beneficiary will be employed as a junior systems engineer, and states that his services are required to help build a geographic information system (GIS) data modeling tool. In response to the Director’s request for evidence (RFE), the Petitioner stated that the Beneficiary’s duties would include the following (verbatim):

- **Ultimately be responsible for the design of a proprietary geographic information system (GIS) data modeling tool.**
 - The tool will be used as a proprietary business solution for [the Petitioner’s] clients who use GIS data, such as maps, coordinates and positioning data, and will allow these clients to create visual models of geographic surfaces and landmarks.
- **Spend 50% of time acquiring and analyzing business requirements of client companies with respect to their GIS data modeling needs. These duties include:**

- Leveraging knowledge of environmental geoscience, geographical information systems and environmental/geographic data analysis.
 - Communicating with clients' engineering, development, and sales teams.
 - Analyzing clients' current data modeling capabilities and software products' integration potential.
- **Spend 50% of time researching upcoming trends in GIS DATA design and conforming these to clients' business needs. These duties include:**
 - Providing technical expertise in GIS technology to [the Petitioner's] development team in modeling GIS data.
 - Contributing to the design, programming and modeling of the proprietary GIS application.
 - Researching recent worldwide advances in GIS data modeling.
 - Helping build documentation around the design of the GIS-related database and application code, such as manuals, user guides, manuals, troubleshooting, and patching guides.
 - Preparing marketing materials to promote our GIS data modeling tool.

According to the Petitioner, the position requires a bachelor's degree in geographic information systems, environmental science, or a related technical field, or its equivalent.

III. ANALYSIS

The Petitioner stated that it wishes to employ the Beneficiary for a three year period; however, the record lacks documentation regarding the work that the Beneficiary would perform to sufficiently substantiate that it has H-1B caliber work for the requested period. For instance, while the Petitioner provided a description of its intention to create a geographic information systems (GIS) data modeling and management tool, it did not submit documentation demonstrating that it has the capacity and resources to develop such a product. We note that the Petitioner submitted an internal market analysis report, entitled "Market Analysis of GIS DB Modelling and Management Systems," which states that the Petitioner has identified the need for an efficient database management system and anticipates beneficial results if such a project could be developed. However, there is no evidence that the Petitioner has initiated such a project. The record lacks supporting evidence such as: (1) a business plan; (2) competitive and/or cost analysis; (3) a short- or long- term budget; (4) evidence substantiating investments or revenue sources; (5) documentation regarding its sales, costs, and income projections; (6) contracts; (7) its timeline and staffing requirements for developing products; and/or (8) marketing materials, company brochures, pamphlets, or other documentation describing in detail its products and services.¹

¹ The H-1B classification is not intended for companies to engage in speculative employment and hire foreign workers to meet possible workforce needs arising from potential business expansions, customers, or contracts. The agency made

Further, the terms and conditions of the Beneficiary's employment, as described in the offer of employment letter submitted in response to the RFE, indicates that "[a]ll days off must be approved by the end-client" and, in the event of resignation, "[w]ritten notice and proof of leaving the position that the employee holds with the end-client must be submitted to the [petitioner's] president." These two statements, coupled with the nature of the Petitioner's consulting business, suggest that the Beneficiary most likely would be outsourced to various client sites as needed depending on project requirements at a given time.

Moreover, the description of the Beneficiary's duties, as provided by the Petitioner, lack the specificity and detail necessary to support the Petitioner's contention that the position is a specialty occupation. While a generalized description may be appropriate when defining the range of duties that are performed within an occupation, such generic descriptions generally cannot be relied upon by the Petitioner when discussing the duties attached to specific employment for H-1B approval. In establishing such a position as a specialty occupation, the description of the proffered position must include sufficient details to substantiate that the Petitioner has H-1B caliber work for the Beneficiary. In response to the RFE, the Petitioner stated that the Beneficiary would "[u]ltimately be responsible for the design of a proprietary geographic information system (GIS) data modeling tool." However, the Petitioner did provide the percentage of time the Beneficiary would spend on this duty. Furthermore, the statement does not provide any insight into the Beneficiary's actual duties and tasks, nor does it explain when the Beneficiary would assume these design duties.

On appeal, the Petitioner states that the "vast bulk of the development and work on the project will be handled by [the Beneficiary] and a small business team." This statement that the Beneficiary will handle "the vast bulk" of the development does not align with stated duties submitted in response to the RFE that he would spend 100% of his time on client requirements and "ultimately be responsible for the design." In addition, the Petitioner states that once the Beneficiary joins the organization, the product will be in the "market evaluation" phase. The Petitioner further states that "[o]nce the product is purchased by a customer, we will then enter new business requirements, or requirements analysis, phase, where the product is customized to the particular end client and its existing platform." This statement is also inconsistent with the Beneficiary's stated duties, of which 100% consist of client requirements and then "ultimately" design duties. No explanation for these inconsistencies was provided.

The Petitioner has not provided sufficient details regarding the nature and scope of the Beneficiary's employment or substantive evidence regarding the actual work that the Beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described do not communicate (1) the actual work that the beneficiary would perform; (2) the complexity, uniqueness and/or specialization of the tasks;

clear long ago that speculative employment is not permitted in the H-1B program. *See, e.g.*, 63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998).

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

However, even if the Petitioner had shown that it would employ the Beneficiary as a junior systems engineer, we still would not find that the proffered position qualifies as a specialty occupation, as explained below.

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 DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.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 "Computer Occupations, All Other" corresponding to the Standard Occupational Classification code 15-1199. There are occupational categories which are not covered in detail by the *Handbook*, as well as occupations for which the *Handbook* does not provide any information. The *Handbook* states the following about these occupations:

Although employment for hundreds of occupations is covered in detail in the *Occupational Outlook Handbook*, this page presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2014 employment, the May 2014 median annual wage, the projected employment change and growth rate from 2014 to 2024, and education and training categories are presented.

² All of our references are to the 2016-17 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>.

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U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-2017 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited Aug. 30, 2016).

Thus, the narrative of the *Handbook* reports that there are some occupations for which only summary data is prepared but detailed occupational profiles are not developed. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies the statutory and regulatory provisions, including this or one of the other three criteria, notwithstanding the absence of the *Handbook's*, support on the issue. In such cases, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that indicates whether the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, we will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

In support of its claim, the Petitioner provided a letter from [REDACTED]. In his letter, [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) lists the duties proposed for the Beneficiary; and (3) states that these duties require at least a bachelor's degree in geographic information systems, environmental science, or a related technical discipline. We carefully evaluated [REDACTED] assertions in support of the instant petition but, for the following reasons, determined his letter does not have significant weight in this matter.

First, [REDACTED] expertise, regarding current industry degree requirements for junior systems engineer positions is not established in the record. His supporting documentation indicates that all of his experience has been in an academic setting as a faculty member within a university's school of computer science and information systems.

Moreover, [REDACTED] has not provided sufficient information to establish his expertise on the practices of organizations seeking to hire junior systems engineers. Without further clarification, it is unclear how his education, training, skills or experience would translate to expertise regarding the current recruiting and hiring practices of an enterprise engaged in "IT solutions" (as designated by the Petitioner in the petition) or similar organizations for junior systems engineers (or parallel positions).

[REDACTED] states that his assessment is based upon a description provided by the Petitioner of the company and the offered position. While [REDACTED] provides a brief, general description of the Petitioner's business activities, he does not demonstrate in-depth knowledge of its operations or how the duties of the position would actually be performed in the context of its business enterprise.

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Furthermore, [REDACTED] opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the Petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. [REDACTED] states that he has "numerous publications in leading journals for the computing and engineering industries." Notably, his curriculum vitae does not reflect that he has published any works on the academic/experience requirements for junior systems engineers (or related issues).

Even assuming [REDACTED] was an expert on degree requirements for junior systems engineers, his letter testimony does not substantiate his conclusions, such that we can conclude that the Petitioner has shouldered its burden of proof. First, [REDACTED] does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation. Second, [REDACTED] does not discuss the duties of the proffered position in any substantive detail. Third, [REDACTED] recitation of the job duties differs from the job description the Petitioner submitted to USCIS. For example, [REDACTED] job description does not state that 100% of the Beneficiary's time will be spent on client requirements. The Petitioner did not address this discrepancy.

As such, we find that [REDACTED] opinion letter lends little probative value, and thus the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is "not in accord with other information or is in any way questionable.").

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 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, 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.

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.

We reviewed the Petitioner's statements regarding the proffered position; however, the Petitioner does not assert and has not provided evidence in support of this criterion. 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 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. However, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than other positions in the occupational category that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. Thus, 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 C- LLC*, ID# 17879 (AAO Aug. 31, 2016)