



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

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

MATTER OF PCM-, LLC

DATE: JUNE 1, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a medical equipment wholesaler, seeks to temporarily employ the Beneficiary as a “health researcher” under the H-1B nonimmigrant classification. *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, Vermont Service Center, denied the petition. The Director concluded that the evidence of record does not establish the proffered position as a specialty occupation.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and asserts that the proffered position qualifies as a specialty occupation under the applicable statute and regulations.

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

On the H-1B petition, the Petitioner described itself as a “[m]edical equipment merchant wholesalers” business and identified the proffered position as a “health researcher.” The Petitioner attested on the required labor condition application (LCA) that the occupational classification for the position is “Economists,” Standard Occupational Classification (SOC) code 19-3011.

In a letter of support, the Petitioner stated that the Beneficiary will perform the following duties (verbatim):

In order to expand current operations we are currently in immediate need for a Health Researcher to oversee activities directly related to making products and providing services in order to exceed our customer’s expectation. The Health researcher will provide technical leadership of research or technical assistance projects including developing research designs and strategic audience-focused project plans, including providing strategic thinking, leading and supporting stakeholder work, and identifying creative solutions to address client needs. [The Beneficiary] will manage projects and staff including leading projects, interacting with clients, and supervising and supporting project team members. Also, she will work participating in professional meetings, advisory panels, and publishing research results in coordination with medical doctors in peer-reviewed publications.

As a Health Researcher, she will engage in business development activities including identifying opportunities and strategic partnerships, cultivating relationships with existing and potential clients, writing proposals, developing budgets, and expanding [the company's] potential sales market.

.....

[The Beneficiary will also] Research and analyze economic issues, Conduct surveys and collect data. Analyze data using mathematical models and statistical techniques[.] Prepare reports, tables, and charts that present research results, Interpret and forecast market trends, Advise businesses, governments, and individuals on economic topics, Design policies or make recommendations for solving economic problems, Write articles for publication in academic journals and other media sources. The Health Researcher, apply economic analysis to issues within a variety of fields, such as education, health, development, and the environment. Some Health Researcher study the cost of products, healthcare, or energy.

In the same letter, the Petitioner stated that the proffered position requires “at least a Bachelor’s Degree.” In response to the Director’s request for evidence (RFE), the Petitioner stated that the proffered position requires a degree in “a specific field of study, which is business.” The Petitioner also provided the following list of duties with the percentage of time spent on each duty (totaling 100% of the Beneficiary’s time):

- Oversee activities directly related to making products (10%);
- Provide services in order to exceed [company’s] customer’s expectation (2%);
- Provide technical leadership of research or technical assistance projects including developing research designs and strategic audience-focused project plans (5%);
- Provide strategic thinking, leading and supporting stakeholder work (5%);
- Identifying creative solutions to address client needs (8%);
- Manage projects and staff including leading projects, interacting with clients, and supervising and supporting project team members (3%);
- She will work participating in professional meetings, advisory panels, and publish result (10%);
- Engage in business development activities including identifying opportunities and strategic partnerships (2%);
- Cultivate relationships with existing and potential new clients (5%);
- Write proposals, developing budgets, and expanding [company’s] potential sales market (10%);
- Develop methodological strategies and address research design issues related to the analysis of large health care database such as administrative claims, survey data and other health care data (12%);

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- Participate in the elaboration and estimation of proposed research studies, including development of detailed study designs and protocols and estimation of time and effort involved in each task (10%);
- Identify and develop solutions to key strategic business problems using high level modeling and statistical analyses techniques (8%); and
- Identify appropriate data sources and define analytical research plans to manage data extraction and manipulate large healthcare databases (10%).

On appeal, the Petitioner asserts that the duties of its health researcher “are quite similar, almost identical” to those of “Market Research Analysts and Marketing Specialists,” corresponding to SOC code 13-1161.

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.¹

As an initial matter, the Petitioner has not consistently stated the minimum entry requirement for the proffered position. In its support letter and RFE response, the Petitioner stated that the proffered position requires at least a bachelor’s degree in business. In its business plan, the Petitioner indicated that its health researcher position requires an “MBA [master of business administration], Analytical, Engineer Background, health care Industry experience.” On appeal, the Petitioner states that it requires “extensive knowledge in the functional areas of business plus at least relevant experience and/or knowledge in the healthcare field to understand the field.” It is therefore not apparent whether the Petitioner requires only a bachelor’s degree in business, a master’s degree in business administration plus engineering and healthcare experience, a degree in business administration plus knowledge or experience of the healthcare industry, or other requirements.²

If the Petitioner’s minimum entry requirement for the proffered position is a degree in business or business administration as alternatively claimed, then this indicates that the proffered position does not require at least a bachelor’s degree *in a specific specialty*, or its equivalent. A degree in the broad and otherwise unspecified field of business or business administration does not represent a degree in a “specific specialty,” section 214(i)(1) of the Act, but rather, constitutes a general-purpose degree. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (recognizing a business administration degree as a “general-purpose” bachelor’s degree); *cf. Matter of Ling*, 13 I&N Dec. 35 (Reg’l Comm’r 1968) (finding business administration to be a broad field “which contains various

¹ 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.

² As will be discussed *infra*, the Petitioner submitted a letter from [REDACTED] attesting that the proffered position minimally requires “a Bachelor’s Degree in Healthcare Management, Business Administration, or a related area, or the equivalent.”

occupations and/or professions, all of which are related to the world of business but each requiring a different academic preparation and experience peculiar to its needs”). Therefore, the Petitioner’s claim that a bachelor’s degree in business or business administration is a sufficient minimum requirement for entry into the proffered position indicates that the proposed position does not qualify as a specialty occupation.

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a general degree, 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) (“The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility.”). While a general-purpose bachelor’s degree 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 at 147.

Again, the Petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor’s degree, i.e., a bachelor’s degree in business or business administration. Without more, this assertion alone indicates that the proffered position is not in fact a specialty occupation. The Director’s decision must therefore be affirmed and the appeal dismissed on this basis alone.³

Moreover, we cannot find that the proffered position qualifies as a specialty occupation because the Petitioner has not adequately established the substantive nature of the proffered position and its associated job duties.

Here, the Petitioner has submitted generic and inconsistent descriptions of the Beneficiary’s proposed duties that are not sufficiently explained within the context of the Petitioner’s particular business operations. For example, the Petitioner indicated that the Beneficiary will spend 10 percent

³ A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor’s or higher degree in business administration with a concentration in a specific field, or a bachelor’s or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor’s or higher degree in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Here, however, the Petitioner has not specified how much (if any) relevant knowledge and/or experience is necessary for the proffered position. Thus, even if the Petitioner’s minimum entry requirement for the proffered position includes an unspecified amount of knowledge and/or experience in engineering and/or healthcare, in addition to a general-purpose business administration degree, this combined requirement is still insufficient to establish a degree requirement equivalent to a degree in a specific specialty. “[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.” *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

of her time “identifying creative solutions to address client needs” and “provid[ing] services in order to exceed [company’s] customer’s expectation.” The Petitioner does not detail the actual tasks the Beneficiary will perform as it relates to its clients or customers, and the nature of the “solutions” and “services” she will provide. The Petitioner does not provide sufficient information to ascertain what tasks the Beneficiary will actually be performing in relation to these generic statements. Although the Petitioner provided numerous pages of its cost structure and price list as well as its business plan, the record does not include sufficient probative information directly relating the vaguely described duties to the Petitioner’s actual business.

A large part of the proffered position appears to involve performing healthcare research studies and research projects. For instance, the Petitioner stated that the Beneficiary will spend 12 percent of her time on developing methodological strategies and researching design issues related to the analysis of large health care databases, 10 percent of time on duties related to research studies and development of detailed study designs and protocols, and another 10 percent of her time identifying the data sources and defining the analytical research plans to extract the data and manipulate healthcare databases. However, the Petitioner does not sufficiently explain the nature of this research, particularly within the context of the Petitioner’s business operations. The Petitioner does not explain in detail what sort of study designs or protocols the Beneficiary will develop, what types of “large health care databases” or other data sources are involved, and who will perform the actual research, for example. The Petitioner also does not supply sufficient information regarding the topics and issues that will be researched, the purpose or parameters of the research and/or projects, and how any of these proposed tasks, including the undefined proposed research studies, relates to the nature of the Petitioner’s operations.

Here, it is important to consider the nature and scope of the Petitioner’s operations as a wholesaler and distributor of orthopedic equipment and other related products. The Petitioner has not sufficiently explained how, as a wholesaler and distributor of medical products, it will utilize the Beneficiary in a “health researcher” position. For example, the Petitioner stated that the Beneficiary will spend 10 percent of her time overseeing activities related to making products. However, as the Petitioner does not identify itself as a manufacturer, it is unclear what aspect of this duty relates to the Petitioner’s business.⁴

While the Petitioner asserts that it has a “parent company [that] manufactures the products in Venezuela,” the Petitioner has not submitted additional information and corroborating evidence of its claimed parent company. Further, contrary to the Petitioner’s assertions, the Petitioner’s 2014 federal tax return indicates that the Petitioner is not a subsidiary or owned in substantial part by another foreign or domestic corporation. “[G]oing on record without supporting documentary

⁴ The Petitioner explained that the Beneficiary will utilize the “Delphi method of doing research,” which is “done by using repeated rounds of questioning and written responses.” The Petitioner further explained that the Beneficiary will survey hospital staff and surgeons with respect to medical products. However, merely identifying one method of performing research is insufficient to explain how the Beneficiary’s claimed research duties are consistent with the nature of the Petitioner’s business operations as a wholesaler and distributor.

evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.” *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

In addition, the Petitioner’s descriptions of the proffered duties are not consistent with its scope of operations. The Petitioner indicates that the Beneficiary will provide “technical leadership of research or technical assistance projects,” and will “manage projects and staff including leading projects . . . and supervising and supporting project team members.” However, the Petitioner has not explained which of its four employees (two employees and two owners) will perform the actual research duties that the Beneficiary will purportedly supervise, or whom the Beneficiary will purportedly supervise and manage.⁵ Notably, the Petitioner’s organizational chart does not identify any positions that report to its health researcher, nor does it identify any teams or specific projects that will be supported by the Beneficiary. Again, “going on record without supporting documentary evidence is not sufficient.” *Id.*

The Petitioner’s job descriptions are inconsistent in other aspects as well. The Petitioner initially asserted that the Beneficiary will perform the job duty of “participating in professional meetings, advisory panels, and publishing research results *in coordination with medical doctors in peer-reviewed publications* (emphasis added).” The Petitioner also highlighted the claimed specialization and complexity of the proposed job duties based in part on the duty of “[writing] articles for publication in academic journals and other media sources.” In response to the Director’s RFE, however, the Petitioner removed the references to “in coordinating with medical doctors in peer-reviewed publications” and “[writing] articles for publication in academic journals” from the list of job duties said to comprise 100 percent of the Beneficiary’s time. The Petitioner has not adequately explained this shift in its descriptions of the proffered job duties. We thus are precluded from understanding exactly what job duties the Beneficiary will perform and the overall nature of the proffered position.⁶

The Petitioner states on appeal that the proffered job duties “are quite similar, almost identical” to those of “Market Research Analysts and Marketing Specialists,” corresponding to a different occupational classification (SOC code 13-1161). The Petitioner also provides on appeal an excerpt from the Occupational Information Network (O*NET) Online Summary Report for “Marketing Research Analysts and Marketing Specialists.” However, the Petitioner’s assertion that the proffered

⁵ The Petitioner’s four employees are a director of strategy/general manager, a financial director, a warehouse supervisor, and an administrative assistant. The Petitioner did not indicate that these employees performed any direct research duties. It is reasonable to assume that the size of an employer’s business has or could have an impact on the claimed duties of a particular position. See *EG Enters., Inc. v. Dep’t of Homeland Sec.*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). The size of a petitioner may be considered as a component of the nature of the petitioner’s business, as the size impacts upon the actual duties of a particular position.

⁶ Although the Petitioner’s RFE response stated that the Beneficiary’s “participation in professional meeting and advisory panels allows her to work in coordination with the medical professionals in publishing research results,” this statement implies that the Beneficiary will not actually be writing the articles for publication. The Petitioner’s RFE response does not sufficiently explain the nature of the proffered duties.

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position should be considered a market research analyst or marketing specialist further precludes an understanding of the proffered position. More specifically, the Petitioner attested on the LCA that the proffered position falls under the occupational category “Economists.” In support of the petition, the Petitioner submitted excerpts from the *Occupational Outlook Handbook (Handbook)* and O*NET reports relevant to the “Economists” occupation. In fact, as the Director noted, much of the Petitioner’s initial job descriptions was copied verbatim from the *Handbook* chapter on “Economists.” The Petitioner has not explained why it now asserts that the proffered duties are “almost identical” to those of “Market Research Analysts and Marketing Specialists,” and how the “Economists” occupational classification selected is nonetheless appropriate.⁷

In response to an RFE or on appeal, the Petitioner cannot offer a new position to the Beneficiary, or materially change a position’s title, its level of authority within the organizational hierarchy, the associated job responsibilities, or the requirements of the position. The Petitioner must establish that the position offered to the Beneficiary when the petition was filed merits classification for the benefit sought. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). The Petitioner has not explained the inconsistencies in the record, and supported its explanation with competent objective evidence.

Accordingly, based upon review of the totality of the record, we find that the Petitioner has not sufficiently established the substantive nature of the work to be performed by the Beneficiary. We are therefore precluded from 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. As the Petitioner has not established that the proffered position satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), the Petitioner has not established that the proffered position qualifies as a specialty occupation.

Finally, we will briefly explain why the opinion letters by [REDACTED] and [REDACTED] are insufficient to establish eligibility under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

⁷ If the proffered duties are identical to those of “Market Research Analysts and Marketing Specialists,” then the submitted LCA would not support the petition. While the Department of Labor (DOL) is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b). The LCA issue would further preclude approval of the petition.

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First, these letters are not based upon sufficient, detailed information about the particular position here within the specific context of the Petitioner's business operations. For instance, neither writer relates any personal knowledge or observations of the Petitioner's operations or the work that the Beneficiary will perform. Further, the writers do not relate their conclusions to specific, concrete aspects of this Petitioner's business operations as a wholesaler and distributor of medical products, as opposed to a manufacturer, to demonstrate a sound factual basis for the conclusions about the duties of the proffered position and its educational requirements.

Second, the writers provide statements as to the necessary educational background of the position, but their requirements are not consistent with each other or with the Petitioner's stated requirements. [REDACTED] states that the position requires a degree in "the specific field of study [of] Business." However, [REDACTED] states that the minimum entry requirement for the proffered position is "a Bachelor's Degree in Healthcare Management, Business Administration, or a related area, or the equivalent." Importantly, the Petitioner did not claim that it requires a bachelor's degree in healthcare management, or its equivalent.

Third, the Petitioner also has not submitted sufficient evidence establishing that [REDACTED] is qualified to render an advisory opinion on the proffered position. [REDACTED] letter simply states that he is a "medical practitioner in the United States" with over 20 years of experience. His letter does not further identify any particular field(s) of specialization or any other qualifications he may have to render an advisory opinion about health researcher positions and the general field of study in business.

We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.* For the reasons discussed above, we find that the letters from [REDACTED] and [REDACTED] do not constitute probative evidence of the proffered position as a specialty occupation.

IV. CONCLUSION

The Petitioner has not established, more likely than not, 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 PCM-, LLC*, ID# 17251 (AAO June 1, 2016)