



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

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

MATTER OF JKCT-, INC.

DATE: JUNE 1, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a freight trucking company, seeks to temporarily employ the Beneficiary as an “electrical maintenance engineer” 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, California Service Center, denied the petition. The Director concluded that the Petitioner did not sufficiently establish that the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in finding that the proffered position does not qualify as 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 an “electrical maintenance engineer.” In its support letter, the Petitioner provided the following proffered job duties for the position (verbatim):

- Design and test electrical and electronic components, equipment, and systems to diagnose and resolve electrical downtime issues (10%);
- Design and develop electro-mechanical components and systems to improve and update motors, refrigeration components and air suspension systems (10%);
- Support day to day operations with knowledge of test specifications, environmental test equipment, and test methods (40%);
- Actively seek out and identify safety improvement opportunities (5%);
- Correct or repair electrical issues with or without maintenance support; ability to instruct maintenance support on corrections or repairs (20%);
- If necessary, train maintenance personnel in troubleshooting methods (5%);

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- Present and implement process improvement where applicable (5%);
- Collect, analyze and summarize all information into daily reports (5%).

According to the Petitioner, the position requires a bachelor of science degree in electrical engineering or the equivalent.

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, we look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that we can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the Director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Here, we find that the record of proceedings lacks sufficient, consistent documentation regarding the Petitioner's claimed business activities and the actual work that the Beneficiary will perform to credibly substantiate the claim that the Petitioner has H-1B caliber work for the Beneficiary for the period of employment requested in the petition.

Specifically, the Petitioner did not sufficiently document its business operations and its need for an electrical maintenance engineer. In the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner described itself as a freight trucking company established in 1986.¹ In a letter filed with the Form I-129, the Petitioner stated that it "own[s] 254 refrigerated trucks that all have air suspension" and a "175,000 square-foot multi-temperature freezer/cooler." The Petitioner further stated that "[a]s temperature controlled trucking becomes increasingly sophisticated and complex, including the potential use of environmentally friendly fuel cells in truck refrigeration units, the

¹ However, in a letter submitted in response to evidence, the Petitioner indicated that it was established in 2003. On appeal, the Petitioner asserted that it was "established almost thirty years ago." The Petitioner did not explain the discrepancies.

presence of an electrical maintenance engineer . . . will be of great benefit.”

However, the Petitioner did not submit sufficient evidence to document its business operations. Notably, the proffered position includes duties such as “design and test electrical and electronic components, equipment, and systems to diagnose and resolve electric downtime issues” and “design and develop electro-mechanical components and systems to improve and update motors, refrigeration components and air suspension systems.” Without documentary evidence to substantiate its electro-mechanical components and systems that require design, testing, and development of such systems, we are unable to determine the nature and scope of the proffered position. “[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)).

We further note that, on appeal, the Petitioner indicates that the Petitioner “is staffed with 29 repair mechanics.” The Petitioner had previously indicated that the Beneficiary’s duties include “correct[ing] or repair[ing] electrical issues with or without maintenance support. . . .” It therefore appears that a part of the Beneficiary duties include handling repairs and maintenance. However, the record of proceedings does not contain documentary evidence regarding its repair mechanic positions such as duties, educational requirements or salary for these positions. Without such information, it is not clear if the proffered position differs from its repair mechanic positions. For H-1B approval, the Petitioner must demonstrate a legitimate need for an employee to exist and to substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. It is incumbent upon the Petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor’s degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor’s degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

Additionally, the Petitioner described the duties comprising the proffered position in generalized and generic terms that do not convey sufficient substantive information to establish the relative complexity, uniqueness and/or specialization of the proffered position or its duties. For example, the Petitioner indicated that the Beneficiary will spend 40 percent of his time “support[ing] day to day operations with knowledge of test specifications, environmental test equipment, and test methods.” However, the Petitioner does not sufficiently define how this translates to specific duties and responsibilities as the term “support[ing] day to day operations” does not delineate the actual work the Beneficiary will perform. The Petitioner does not explain the Beneficiary’s specific role in “support[ing]” and how such work will be conducted within the Petitioner’s business operations and the proffered position. On appeal, the Petitioner stated that the Beneficiary will have to understand the “various safety regulations and mandatory maintenance systems put in place by the U.S. Department of Transportation agencies.” However, the Petitioner did not further elaborate on the specific tasks, methodologies, and applications of knowledge that would be required in furtherance of supporting the day-to-day operations. Although the Petitioner provided a little insight into the safety regulations to which the Beneficiary would have to adhere, it did not provide a more detailed description. Without additional information substantiated by documentary evidence, we are unable to discern the nature of the position and whether the position indeed qualifies as a specialty occupation.

Moreover, on appeal, the Petitioner makes claims that contradict evidence it provided in support of the petition. First, as part of its assertion that the proffered position primarily performs specialty occupation duties, the Petitioner states that it needs an “expert on hand.” The Petitioner further asserts that the “primary focus of the proffered position” is to take on a “leadership role” and to “lead the fleet maintenance group.” However, the characterization of the proffered position as an expert who will lead or oversee the maintenance group is at direct odds with the Petitioner’s submitted labor condition application (LCA), which indicates that the Petitioner has designated the position in the LCA as Level I (the lowest of four assignable wage-levels).² “[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

Based on all of the above reasons, including the lack of reliable, detailed information and documentation, we find the evidence of record insufficient to establish that the Beneficiary will be employed to work as an electrical maintenance engineer. Further, because of the discrepancies discussed above, 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. “[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner

² The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). 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 http://flcdatcenter.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.*

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.

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submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92. Thus, we find that the evidence of record is insufficient to establish the substantive nature of the work to be performed by the Beneficiary.

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.

IV. OPINION LETTER

We will now address why we accord little probative weight to [REDACTED] opinion regarding the proffered position. [REDACTED] a Professor of Electrical Engineering at [REDACTED] stated that the letter will “demonstrate that the position of Electrical Maintenance Engineer requires that the candidate possess at least a Bachelor’s Degree in Electrical Engineering from an accredited institution of higher education in the United States.”

We note that [REDACTED] provided a list of the job duties, which is virtually verbatim from the Petitioner’s job duties. Upon review of the opinion letter, there is no indication that [REDACTED] possesses any knowledge of the Petitioner’s proffered position and its business operations beyond the information provided by the Petitioner. [REDACTED] did not demonstrate or assert in-depth knowledge of the Petitioner’s specific business operations or how the duties of the position would actually be performed in the context of the Petitioner’s business enterprise. There is no evidence that [REDACTED] has visited the Petitioner’s business, observed the Petitioner’s employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

[REDACTED] asserted a general industry educational standard for electrical maintenance engineer positions without referencing any supporting authority or any empirical basis for the pronouncement. His opinion did not relate his conclusion to specific, concrete aspects of the Petitioner’s business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. In addition, [REDACTED] did 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 published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the

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Petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements.

In addition, there is no indication that the Petitioner advised [REDACTED] that the proffered position is characterized as a low, entry-level electrical maintenance engineer, who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the Beneficiary will be expected to perform routine tasks that require limited exercise of judgment. It appears that [REDACTED] may have found this information relevant for his opinion letter.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by [REDACTED] is not probative evidence to establish the proffered position as a specialty occupation. The conclusion reached by [REDACTED] lacks the requisite specificity and detail and is not supported by independent, objective evidence demonstrating the manner in which he reached such conclusion. There is an inadequate factual foundation established to support the opinion and the opinion is not in accord with other information in the record. Therefore, the letter from [REDACTED] does not establish that the proffered position is a specialty occupation.

We may, in our discretion, use advisory opinion statements submitted as expert testimony. 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. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

V. CONCLUSION

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 JKCT-, Inc.*, ID# 16584 (AAO June 1, 2016)