



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

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

MATTER OF C-A-P-C-, INC.

DATE: MAR. 1, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a non-profit provider of education, social, and community services, seeks to temporarily employ the Beneficiary as a part-time “Assistant Teacher” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, California Service Center, denied the petition and affirmed the denial decision on motion. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

**I. ISSUE**

The issue before us is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

**II. SPECIALTY OCCUPATION**

**A. Legal Framework**

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) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the

attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must meet one of the following criteria:

- (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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Fed. Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets 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 proffered 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”). Applying this standard, USCIS regularly approves H-1B petitions for qualified individuals who are to be employed as engineers, computer scientists, certified public accountants,

college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the individual, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

#### B. The Proffered Position

The Petitioner claims in the labor condition application (LCA) that the proffered "Assistant Teacher" position corresponds to Standard Occupational Classification (SOC) code and title 25-2021, Elementary School Teachers, Except Special Education.

In its November 7, 2013, letter of support, the Petitioner stated that it needs the assistant teacher "to be responsible for strengthening the teaching of English as a second language to multicultural groups of students including immigrants and international students coming from different countries."

In a letter dated May 13, 2014, the Petitioner stated that the Beneficiary will be "devoted to these duties and responsibilities":

- a. Coach, mentor and assist Teachers and/or Group Leaders to instruct student basic academic, social, and other formative skills in public school at the elementary level (50%).
- b. Prepare Lesson Plans to educate students on subjects such as reading, writing, math, science, and cultural arts aligned with NYS Common Core Learning Standards and self esteem, character development, and social skills (15%).
- c. Evaluate students' assignments and performance development to monitor their progress. Keep accurate records of student attendance (10%).
- d. Work with individual students to challenge them to overcome their weaknesses in English Literacy using TESOL strategies (10%).
- e. Supervise children outside of the classroom during field trips, and recreational activities (5%).

- f. Assist Teachers and Administrators to translate or communicate with parents orally and in writing about their child’s progress in the public school and after school classes (10%).

In the letter of support, the Petitioner stated that the proffered position requires “a minimum of a Bachelor’s degree in Education, English, Language Arts or other related field of study” and that each of its assistant teachers “hold[s] a baccalaureate degree in an acceptable course of study.” In a letter dated April 25, 2014, the Petitioner stated that the proffered position requires a minimum of a bachelor’s degree in “an acceptable course of study, such as education and/or related field . . . .” The Petitioner stated in a letter dated June 24, 2014, and an “Affidavit” submitted on motion, dated January 15, 2015, that the proffered position requires “a baccalaureate degree in Teaching English to Speakers of Other Languages (‘TESOL’).”

### C. Analysis

*A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position*

We will first discuss the record of proceedings in relation to the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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.

We recognize the U.S. Department of Labor’s (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.<sup>1</sup> As was noted above, the Petitioner claims in the LCA that the proffered position is an “Assistant Teacher” position, but that it corresponds to SOC code and title 25-2021, Elementary School Teachers, Except Special Education, from O\*NET. The *Handbook* states the following about the duties of Teacher Assistant positions:

#### **What Teacher Assistants Do**

Teacher assistants work under a teacher’s supervision to give students additional attention and instruction.

#### **Duties**

Teacher assistants typically do the following:

- Reinforce lessons presented by teachers by reviewing material with students one-on-one or in small groups

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2016 – 2017 edition available online.

- Enforce school and class rules to help teach students proper behavior
- Help teachers with recordkeeping, such as tracking attendance and calculating grades
- Help teachers prepare for lessons by getting materials ready or setting up equipment, such as computers
- Supervise students in class, between classes, during lunch and recess, and on field trips

Teacher assistants also are called *teacher aides*, *instructional aides*, *paraprofessionals*, *education assistants*, and *paraeducators*.

Teacher assistants work with or under the guidance of a licensed teacher. Generally, teachers introduce new material to students while teacher assistants help reinforce the lessons by working with individual students or small groups of students. For example, after the teacher presents a lesson, a teacher assistant may help a small group of students as they try to master the material.

Teachers may seek feedback from assistants to monitor students' progress. Some teachers and teacher assistants meet regularly to discuss lesson plans and student development. Teacher assistants sometimes help teachers by grading tests and checking homework.

Some teacher assistants work only with special education students. Some of these students attend regular classes, and teacher assistants help them understand the material and adapt the information to their learning style. Teacher assistants may work with students who have more severe disabilities in separate classrooms. They help these students with basic needs, such as eating or personal hygiene. With young adults, they may help students with disabilities learn skills necessary for them to find a job or live independently after graduation.

Some teacher assistants work in specific locations in the school. For example, some work in computer laboratories, teaching students how to use computers and helping them use software. Others work as recess or lunchroom attendants, supervising students during these times of the day.

Although most teacher assistants work in elementary, middle, and high schools, others work in preschools and childcare centers. Often, one or two assistants work with a lead teacher to provide the individual attention that young children need. They help with educational activities. They also supervise the children at play and help with feeding and other basic care.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Teacher Assistants," <http://www.bls.gov/ooh/education-training-and-library/teacher-assistants.htm#tab-2> (last visited Feb. 29, 2016).

The duties of the proffered position are consistent with the duties the *Handbook* attributes to teacher assistant positions. Further, the Petitioner's organizational chart indicates that "Asst. Teacher[s]/Counselors/Tutors" are one level below "Group Leaders/Teachers." On the balance, we find that the proffered position is a teacher assistant position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of teacher assistant positions:

### **Education**

Most school districts require applicants to have completed at least 2 years of college coursework or have earned an associate's degree. Teacher assistants in schools that have a Title 1 program (a federal program for schools with a large proportion of students from low-income households) must have at least a 2-year degree, 2 years of college, or pass a state or local assessment.

Associate's degree programs for teacher assistants prepare the participants to develop educational materials, observe students, and understand the role of teachers and teaching assistants in the classroom.

Most states require instructional aides who work with special-needs students to pass a skills-based test.

*Id.* at <http://www.bls.gov/ooh/education-training-and-library/teacher-assistants.htm#tab-4> (last visited Feb. 29, 2016).

The *Handbook* indicates that teacher assistant positions do not normally require a minimum of a bachelor's degree in a specific specialty or its equivalent. The *Handbook* does not, therefore, support the proposition that the proffered position is a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

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 this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. 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.

In this case, the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The record lacks sufficient evidence to support a finding that the particular position proffered here, would normally have such a minimum, specialty degree requirement or its equivalent. The duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the Petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

*The requirement of a baccalaureate or higher degree in a specific specialty,  
or its equivalent, is common to the industry in parallel  
positions among similar organizations*

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative sources) 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 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."

Based upon a complete review of the record, we conclude that the Petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the Petitioner's industry in positions that are (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner. For the reasons discussed above, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

*The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent*

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). A review of the record of proceedings indicates that the Petitioner has not credibly demonstrated that the duties the Beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent.

For instance, 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 of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered 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 particular position here. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. Also, the evidence of record does not establish that this position is significantly different from other teacher assistant positions such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty or its equivalent is not required for the proffered position.

The Petitioner did not establish that its particular position is so complex or unique that it can only be performed by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Therefore, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

*The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position*

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent, for the position. To this end, we usually review a petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must also establish that a petitioner's imposition of a degree requirement is not merely 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 a 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 artificially 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 other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The Petitioner provided a list of its assistant teachers and their claimed educational credentials as well as transcripts and diplomas for those assistant teachers. Those transcripts and diplomas are in a wide array of fields and the evidence does not demonstrate the subjects that the assistant teachers teach. While the evidence indicates that the Petitioner requires its assistant teachers to have a minimum of a bachelor's degree, it does not establish that the Petitioner requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent for those positions.

The record of proceeding does not demonstrate that the Petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position. Accordingly, the Petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

*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 in a specific specialty, or its equivalent*

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.

Upon review of the record of the proceedings, we find that the Petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. The proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. The evidence of record does not establish that the duties which collectively constitute this position are significantly different from those of other teacher assistant positions that the *Handbook* indicates only typically require two years of college coursework or an associate's degree. The record does not distinguish the proffered position as unique from or more complex than other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is

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usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. For these reasons, the evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

### III. CONCLUSION

As set forth above, we find the evidence of record insufficient to establish that the proffered position qualifies as a specialty occupation. Accordingly, the appeal will be dismissed and the petition denied.

In visa petition proceedings, the burden is on the Petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)).

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-A-P-C-, Inc.*, ID# 16016 (AAO Mar. 1, 2016)