



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

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

MATTER OF S-T- INC

DATE: MAR. 29, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an “IT consulting and software development firm,” seeks to temporarily employ the Beneficiary as a “validation analyst” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) § 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: (1) that the proffered position is not a specialty occupation; and (2) that the Beneficiary is not qualified to perform the duties of 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 is not a specialty occupation and that the Beneficiary is not qualified to perform the duties of a specialty occupation.

Upon *de novo* review, we will dismiss the appeal.

I. SPECIALTY OCCUPATION

We will first address whether the evidence of record establishes that the Petitioner will employ the Beneficiary in a specialty occupation position.

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

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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 Beneficiary, 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 Petitioner and the Proffered Position

The Petitioner stated in its support letter dated April 2, 2015, that it is an “innovative software development company.” According to the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner is located in [REDACTED] Georgia, was founded in 2014, has a gross income of \$737,862, and employs two individuals. The Petitioner stated that “[t]he dynamic management team at [the Petitioner] contributes greatly with their innovative ideas by adapting latest technologies and modern methods to help the needs of its customers.”

According to the Petitioner’s support letter, the Beneficiary would be employed as a full-time validation analyst working on an operational support project for its end-client, [REDACTED] which is located in [REDACTED] Washington, for the duration of the petition. The Petitioner stated that the Beneficiary would (verbatim):

- Review Business Requirements & prepare Validation Master Plan (VMP).
- Review the validation protocols for the LIMS application.

- Develop documentation for all aspects of Computer System Validation (CSV).
- Track, analyze and document the defects by performing Manual Testing[.]
- Validate Standard Operating Procedure (SOPs) to ensure compliance with USFDA rules and regulations, 21 CFR Part 11 compliance strategies.
- Review Corrective and Preventive Action (CAPA) and create Remediation Plans for the project management approval after the GAP analysis.
- Review the User Requirement Specification (URS) and the Functional Requirement Specification (FRS) document and analyzing the causes leading to discrepancies and failure of the execute OQ scripts.
- Develop FDA compliance documentations [sic], Prepared Standard Operating Procedures (SOPs) according to required specifications.
- Prepare documentation during various stages of AERS validation lifecycle, in accordance with FDA regulations.
- Develop validation and quality assurance programs including templates for validation related documentation such as Validation Protocols, Installation Qualification (IQ), Operational Qualification (OQ), Performance Qualification (PQ).
- Involve in calibration of [REDACTED] and checking its accuracy, detection limit, noise level, precision, repeatability, reproducibility and robustness.
- Involve in preparing and reviewing Operational Qualification (OQ) and Performance Qualification (PQ) protocols.
- Design, implement and validate 21 CFR Part 11 compliance strategies for LIMS.
- Co-ordinate with Business Owners, System Owners, Business Analyst and Technical Writers[.]
- Perform software quality assurance validation tests and system compliance to federal regulations (CFR Part 11) and set overall strategic vision for multiple sites.
- Assess risk and compliance issues for Data Migration activities and OQ execution and communicate the risk issues with the IT and the management team.
- Prepare a Data Migration Summary Report stating the data migration activities taken place while loading the static data in the LIMS application.
- Analyze the System Problem Reports (SPR) and identifying execution and protocol generation errors related to the OQ and End to End Test scripts.
- Identify discrepancies causing failure in the OQ scripts and re-writing the OQ scripts.
- Executes the OQ scripts for the project to make sure the scripts are updated with the current system specification and the system meet[s] the functionalities specified in the URS and FRS.
- Prepare System Problem Report (SPR) Forms that proves a high degree of assurance regarding the root causes of the failures in the pre-executed copy and the resolutions taken to resolve the issues.
- Create the Requirement Traceability Matrix document to track the URS and FRS are fulfilled by executing the OQ and PQ scripts.

- Prepare the Validation Summary Report that summarizes the validation activities that were performed for the LIMS application.
- Review Vendor Audit Report summarizing the SDLC approach and methodologies.
- Review implementation of software systems in conformance with regulatory requirements as they pertain to 21 CFR Part 11 and GAMP standards.
- Coordinate, locate, track, organizes [sic], and verify validation documentation for cGMP compliance and regulatory requirements.
- Review the User Requirement and prepared the detailed Test Plans and Test Criteria.
- Develop, review and execute Test Plans, Test Cases and Test Conditions.
- Perform Functionality and Regression testing using Win Runner and QTP.
- Manage and organize requirement coverage, Test Case Management and Defect Management using Quality Center.
- Analyze Business, User and Functional requirements to develop Test Plans, Test Cases and Test Scripts and organized requirement coverage using Quality Center.
- Develop Requirement Traceability Matrix (RTM) to track User and Functional requirements.
- Prepare Standard Operating Procedures (SOPs) according to required specifications.

The Petitioner stated that it requires a minimum of a:

[b]achelor's degree or foreign equivalent in CS/CIS/CE or other closely related Engineering field with related professional experience. Alternatively, since this position is heavily involved in the business side of the Healthcare and Pharmaceutical Company, Business Administration or Pharmaceutical major with advanced validation experience is also required.

The submitted labor condition application (LCA) indicates that the Petitioner has classified the proffered position as a computer systems analyst at a Level I wage.

C. Analysis

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, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency 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.”

Moreover, we note that, as recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the Petitioner, evidence of the client companies’ job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-88. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* at 384. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. *See id.*

Here, the record of proceeding in this case is similarly devoid of sufficient information from the claimed end-client regarding the specific job duties to be performed by the Beneficiary for that company. While the letter from the end-client dated March 27, 2015, is acknowledged, we find that it does not establish the substantive nature of the proffered position. Specifically, the letter does not reference the Beneficiary by name, discuss her position in any meaningful detail, indicate that the end-client needs the Beneficiary’s services for the duration of the petition, or indicate that a bachelor’s degree in a specific specialty, or the equivalent is required to perform the duties.

For example, the letter from the end-client states that it is “looking to fill five positions with the resources of [the Petitioner],” and that the letter is issued “for the five candidates,” but does not name the candidates or the Beneficiary. The letter further states that a “validation analyst” will “ensure complete understanding and compliance to SDLC,” “write precise validation documents, validation reports, and validation plans,” and “write precise and complete records to assist clinical data systems validation.” However, there is no further explanation of what is required to “ensure complete understanding and compliance to SDLC” or what “SDLC” is. Further, there is insufficient information on what is meant by general terms “write precise validation documents” or “write precise and complete records.” The duties as described do not provide sufficient information regarding the particular work and its day-to-day performance within the end-client’s business operations. The duties also do not provide any particular details regarding the demands, level of responsibilities and requirements necessary for the performance of these duties. In other words, the generalized duties do not establish requirement of theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the demands of the proffered position.

The Petitioner provided other documents in support of the proffered position; however, they do not provide sufficient information regarding the duties and the requirements for the position. The Petitioner submitted a service agreement executed between the Petitioner and a vendor, and a work order for the end-client issued pursuant to that agreement. However, neither documents describe any duties of the proffered position nor detail the qualifications necessary to perform them.

Moreover, we note that the record contains no contracts, service agreements, work orders, or other agreements executed between the vendor and the end-client. In other words, the record contains no evidence of any binding obligation on the part of the end-client to provide the work opportunity upon which the entire petition is based. Absent such evidence delineating the contractual terms of the project to which the Beneficiary is assigned, including the duties and the requirements for the position, we are unable determine the substantive nature of the proffered position.

In addition, the record does not establish that the Beneficiary will be employed for the validity of the requested H-1B employment period. While the Petitioner makes several generalized assertions in this regard, we note that neither the work order nor the letter from the end-client indicate that the Beneficiary would provide services for the end-client throughout the duration of the petition. Specifically, the work order has a field titled "Project Duration/Start Date"; however, it only listed a start date of October 1, 2015 and no "project duration" was given. Moreover, the end-client's letter specifically states that "this letter is issued . . . based on our future need for a project, and is subject to change," and that "it shall NOT be considered as project agreement, work order or has any related influence [*sic*]." As the record of proceeding does not contain sufficient evidence establishing that the Beneficiary would be assigned to work for the end-client for the entire validity period requested, we cannot find that the Petitioner has demonstrated a legitimate need for the Beneficiary's services. In other words, the Petitioner has not demonstrated that it has secured definitive, non-speculative H-1B caliber work for the beneficiary for the entire period of employment requested in the petition.¹

The Petitioner has not provided sufficient information regarding the nature and scope of the Beneficiary's employment or substantive evidence regarding the specialty occupation work that the Beneficiary would perform.² Without a meaningful job description, the record lacks evidence

¹ The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an individual to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an individual is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the individual has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the individual will engage in a specialty occupation upon arrival in this country.

Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,419-20 (proposed June 4, 1998) (to be codified at 8 C.F.R. pt. 214).

² While the Petitioner provided a list of job duties, it is noted that petitioner-provided duties are often outside the scope of consideration for establishing whether the position qualifies as a specialty occupation. See *Defensor v. Meissner*, 201

sufficiently concrete and informative to demonstrate that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty, or its equivalent, as a minimum for entry into the occupation. The tasks as described do not consistently communicate: (1) the substantive nature and scope of the Beneficiary's employment within the Petitioner's business operations; (2) the actual work that the Beneficiary would perform; (3) the complexity, uniqueness and/or specialization of the tasks; and/or (4) the correlation between that work and a need for a particular educational level of highly specialized knowledge in a specific specialty.

Therefore, we are precluded from finding that the proffered position is a specialty occupation under 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. Thus, the Petitioner has not satisfied any of the criteria under the applicable provisions at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We further note that even if we were to assume the existence of the proffered position as claimed, the Petitioner has not established that the proffered position qualifies as a specialty occupation because the end-client does not require a bachelor's degree in a specific specialty, or the equivalent, for the proffered position. Specifically, the letter from the end-client states that it "requires someone with minimum of a bachelor's degree or foreign equivalent with related working experience." 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 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."). Thus, 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.

F.3d at 387-388 (stating that the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination where the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company).

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We will also briefly address why we accord little probative weight to [REDACTED] opinion regarding the proffered position. In the letter, [REDACTED] states that “[i]t is apparent that a Validation Analyst with the specific duties listed below would be considered a professional position and would normally be filled by a graduate with a minimum of a Bachelor’s Degree in Information Systems or a related area, or the equivalent.” However, we find that [REDACTED] opinion is not based upon sufficient information about the validation analyst position proposed here.

[REDACTED] does not relate any personal observations of the Petitioner’s operations or the work that the Beneficiary will perform, nor does he state that he has reviewed any projects or work products related to the proffered position. Further, [REDACTED] does not seem to be aware that the Beneficiary will be working on a project at the site of the end-client. Therefore, [REDACTED] opinion does not relate his conclusions to specific, concrete aspects of this Petitioner’s business operations and its projects to demonstrate a sound factual basis for his conclusions about the duties of the proffered position and its educational requirements.

Further, there is also no indication that the Petitioner advised [REDACTED] that it characterized the proffered position as a low, entry-level validation analyst position for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). [REDACTED] indicates that:

[i]t is important to note that the duties described above are not those of a lower level employee performing tasks such as those duties performed by a Technologist or an IT-support employee, but rather those of a professional employee with a strong background in engineering concepts and principles and a much greater great [sic] level of responsibility within the company.

It appears that [REDACTED] would have found the wage-level information relevant for his opinion letter. Moreover, without this information, the Petitioner has not demonstrated that [REDACTED] possessed the requisite data necessary to adequately assess the nature of the proffered position.

Moreover, [REDACTED] also concludes that the proffered position requires at least a bachelor’s degree in information systems or a related field, which is a narrower minimum requirement than both the end-client’s stated requirement of a “minimum of a bachelor’s degree or foreign equivalent with related working experience” and the Petitioner’s stated requirement of a “[b]achelor’s degree or foreign equivalent in CS/CIS/CE or other closely related Engineering field with related professional experience . . . [and a] Business Administration or Pharmaceutical major with advanced validation experience.” With the limited information provided, it is not clear how [REDACTED] arrives at this conclusion.

For all of these reasons, we find that [REDACTED] letter holds little probative value toward establishing the proffered position as a specialty occupation. 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.*

II. BENEFICIARY'S QUALIFICATIONS

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the Petitioner did not demonstrate that the proffered position requires at least a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, we need not and will not address the Beneficiary's qualifications further.

III. CONCLUSION

As set forth above, we agree with the Director's conclusion that the evidence of record as currently constituted does not establish that the proffered position is a specialty occupation.³

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) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-T- Inc*, ID# 15964 (AAO Mar. 29, 2016)

³ As this issue precludes approval of the petition, we need not address any of the additional deficiencies we have observed in the record of proceeding.