



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

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

MATTER OF I- INC.

DATE: MAY 4, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting business, seeks to extend the temporary employment of the Beneficiary as a “senior storage operations specialist” 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 that the proffered position does not qualify as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. The Petitioner submits additional evidence and asserts that it has established that the proffered position is a specialty occupation.

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

I. SPECIALTY OCCUPATION

A. Legal Framework

To meet its burden of proof, the Petitioner must establish that the employment it is offering to the Beneficiary meets the following statutory and regulatory requirements.

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).

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.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

B. Proffered Position

The Petitioner identified the proffered position as a "senior storage operations specialist" on the Form I-129, and attested on the required labor condition application (LCA) that the occupational classification for the position is "Network and Computer Systems Administrators," corresponding to the Standard Occupational Classification (SOC) code 15-1142, at a Level I wage rate.

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On both the Form I-129 and the LCA, the Petitioner indicated that the Beneficiary will work off-site at the address of [REDACTED] Illinois. The Petitioner did not list any other work locations for the Beneficiary. The Petitioner identified the address of [REDACTED] Illinois, as the Beneficiary's home address.

In the letter of support, the Petitioner listed the following job duties for the proffered position:

- Be responsible for the design, implementation, and maintaining [REDACTED] and [REDACTED]
- Assist in the planning of migration approach from one storage array to another
- Implement, design, and plan the Storage Resource management (SRM) Suite, including testing and configuration documentation
- Provide hand-on-training to the Client Resources on the new [REDACTED] and SRM tools
- Troubleshoot any issued related to system and provide 24/7 production support

The Petitioner stated that these duties "require an advanced theoretical knowledge and practical expertise gained through either a Bachelor's or a Master's degree in Computer Science, Information Systems, Management Information Systems, Electrical/Electronics Engineering, Physics, or a closely related field."

The Petitioner also submitted letters from the purported end-client and mid-vendor in this matter. These letters provide the following description of the proffered position:

- [REDACTED] Storage provisioning, [REDACTED] setup and management, [REDACTED] performance troubleshooting, Unisphere for [REDACTED], [REDACTED] and [REDACTED]
- [REDACTED] Zoning, [REDACTED] management
- [REDACTED] Management and provisioning
- Recoverpoint provisioning skills. CG creation, deletion, enable/disable image access, and RP troubleshooting
- SRM [REDACTED] – Manage SRM tool, Monitoring and generation of reports. **Will eventually need SCA

C. 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.¹

For instance, the letters from the end-client describe the duties of the proffered position in overly broad and generalized terms. The stated duties lack sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance will require.

Further, the letters from the end-client, mid-vendor, and the Petitioner all state that the Beneficiary will be assigned to “the project.” Other than stating that the project is expected to last until February 2018, there has been no further explanation regarding the “project” to which the Beneficiary will be assigned. For instance, the letters do not specify the name and nature of this particular project, or the resources and personnel dedicated to this project. Without more, we find the evidence of record inadequate to convey the substantive nature of the work that the Beneficiary will perform for the claimed end-client.

In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner’s business operations, or the end-client’s business operations as in the case here, to demonstrate that a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. The Petitioner has not adequately done so here.²

As the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, we are 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. 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 for classification as a specialty occupation.

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 The record of proceedings does not contain copies of any contracts between the Petitioner, the claimed end-client, and/or the claimed mid-vendor in this case. The lack of such objective evidence leads us to further question whether the Petitioner has legitimate, H-1B caliber work available for the Beneficiary for the period of employment requested in the petition.

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We will now address the opinion letter prepared by [REDACTED]. [REDACTED] concludes that the proffered position requires the attainment of at least a bachelor's-level degree in computer information systems/applications, information systems, engineering (including civil engineering with a concentration in computer information systems), or another closely related field, or the equivalent.

We find that [REDACTED] opinion is not based upon sufficient information about the actual position being proposed here. For instance, [REDACTED] does not indicate whether he visited the business premises where the work would be performed, or whether he discussed the position with anyone affiliated with the end-client, so as to ascertain and base his opinions upon the substantive nature and educational requirements of the proposed duties as they would be actually performed.

Significantly, the majority of the job duties described by [REDACTED] is not corroborated by job descriptions provided by the end-client. For example, [REDACTED] states that a senior storage operational specialist “works with both the business and technology teams to handle day-to-day business applications . . . [and serves as] the go-between when it comes to communicating those changes between departments.” He further states that a senior storage operational specialist’s “primary role is to analyze a company’s system, which includes evaluating business models, zeroing in on the business’s strategic needs, and make recommendations for improvements.” However, no such job duties involving liaising with the end-client’s business department and evaluating its business models were mentioned in the end-client letters.

Additionally, [REDACTED] states that the proffered position “revolves around the development and coding of computer software systems” and has “a complex software development and system engineering role.” However, these descriptions appear at odds with the Petitioner’s designation of the proffered position under the “Network and Computer Systems Administrators” occupational category (SOC code 15-1142), as the core duties of positions under this occupational category revolve around installing and supporting an organization’s network systems, as opposed to “software development” or “system engineering” as stated by [REDACTED]. [REDACTED] does not identify

³ We recognize the U.S. Department of Labor’s (DOL) Occupational Information Network (O*NET) and *Occupational Outlook Handbook (Handbook)* as authoritative sources on the duties and educational requirements of the wide variety of occupations that they addresses. O*NET summarizes the core duties of positions under the “Network and Computer Systems Administrators” occupational category as to “[i]ninstall, configure, and support an organization’s local area network (LAN), wide area network (WAN), and Internet systems or a segment of a network system” and “[m]onitor network to ensure network availability to all system users and may perform necessary maintenance to support network availability.” O*NET Summary Report for “Network and Computer Systems Administrators.” <http://www.onetonline.org/link/summary/15-1142.00> (last visited Apr. 20 2016).

Likewise, the *Handbook* summarizes the core duties of positions under the “Network and Computer Systems Administrators” occupational category as to “organize, install, and support an organization’s computer systems, including local area networks (LANs), wide area networks (WANs), network segments, intranets, and other data communication systems.” DOL, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Network and Computer Systems Administrators,” <http://www.bls.gov/ooh/computer-and-information-technology/print/network-and-computer-systems-administrators.htm> (last visited Apr. 20, 2016). None of these authoritative sources corroborate [REDACTED] descriptions of the proffered position’s “primary” duties.

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the source of his information about the duties of the proffered position that are not contained and corroborated by other evidence in the record.

Furthermore, contrary to [REDACTED] assertions that the proffered position and its constituent duties are “complex,” “highly specialized,” and “advanced,” the Petitioner designated the proffered position as a Level I (entry) position on the LCA. In designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within this occupation.⁴ [REDACTED] does not discuss the fact that the Petitioner submitted an LCA certified for a wage-level that is appropriate for a beginning level position relative to others within the occupation, and which signifies that the Beneficiary is only expected to possess a basic understanding of the occupation. Rather, [REDACTED] appears to believe that the Beneficiary will have great autonomy and responsibility when performing the duties of the proffered position, such as to “make changes to information technology policy at the company.” These omissions greatly diminish the evidentiary value of his opinion, as his opinion does not appear to be based on a complete understanding of the proffered position.

Rather, it appears that [REDACTED] opinion is largely based upon generalized information about other positions bearing the same or similar title to the proffered position.⁵ This forms a faulty factual

⁴ The wage levels are defined in the DOL’s “Prevailing Wage Determination Policy Guidance.” A Level I wage rate is described as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer’s methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

The Petitioner’s designation of this position as a Level I, entry-level position undermines the claim that the position is particularly complex or specialized 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.

⁵ For example, [REDACTED] references information found on the Internet, such as from www.payscale.com and job announcements posted online. Although [REDACTED] states that he extensively researched employment websites, he lists only three example job postings, all of which require a bachelor’s degree in an unspecified “related field.”

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basis for his opinion, as a determination of whether a particular job qualifies as a specialty occupation must be based upon the actual duties of the proffered position, combined with the nature of the business operations where such work is to be performed, not upon a position's title or generic job duties. Accordingly, we find that [REDACTED] opinion letter does not merit recognition or weight as an expert opinion, and is not probative evidence towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 all of the reasons discussed above, the evidence of record is insufficient to establish that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), and thus, that it qualifies for classification as a specialty occupation. Accordingly, the appeal will be dismissed and the petition denied.

II. BENEFICIARY'S QUALIFICATIONS

As the Petitioner did not demonstrate that the proffered position is a specialty occupation, we need not fully address other issues evident in the record. That said, we wish to identify additional issues to inform the Petitioner that these matters should be addressed in future proceedings.⁶

Specifically, the record does not currently demonstrate that the Beneficiary's combined education and work experience is the equivalent of a U.S. bachelor's degree in a specific specialty. While the claimed equivalency determinations from [REDACTED] are based in part on experience, the record does not establish that the evaluators have authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university with a program for granting such credit. *See* 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(4) and (D)(1). We observe, for example, that the letter from [REDACTED] Associate Dean, College of Management and Technology at [REDACTED] states that [REDACTED] "provides associated support to the Program Director by making recommendations regarding transfer credits, evaluating educational credentials, and/or Professional Certifications/Experience." However, the authority to provide "support" and "recommendations" does not equate to the authority to actually grant college-level credit pursuant to the plain language of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Further, the Petitioner has not provided sufficient information about the "life experience" credits or the [REDACTED] under the School of Business at the [REDACTED]

The record also does not establish that the Beneficiary's expertise in the specialty is recognized through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(4) and (D)(1). The experience letters provided and which were reviewed by the

⁶ In reviewing a matter *de novo*, we may identify additional issues not addressed below in the Director's decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) ("The AAO may deny an application or petition on a ground not identified by the Service Center.").

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evaluators do not include sufficient information to show that the Beneficiary has education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in a specialty occupation, and that he has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. Thus, the evaluations by [REDACTED] are not probative evidence of the Beneficiary's qualifications. We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *Id.*

III. EMPLOYER-EMPLOYEE RELATIONSHIP

Another issue evident in the record that we wish to identify, and which should be addressed in future proceedings, is whether the Petitioner meets the regulatory definition of a United States employer as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii).

In this matter, the Petitioner represented on both the Form I-129 and the LCA that Beneficiary will work off-site at the address of [REDACTED] Illinois. The Petitioner identified this address as the Beneficiary's home address. The letters from both the mid-vendor and the end-client similarly state that the Beneficiary will be working "remotely" from [REDACTED] apartment number [REDACTED] Illinois. However, the Petitioner has not credibly explained, in detail, how the Beneficiary will be providing his services from his home in Illinois to the end-client, whose office address has not been identified for the record.

For example, the Petitioner states on appeal that the Beneficiary "will be stationed at the [end-client's] office located at [REDACTED] IL." The Petitioner further states on appeal that "[t]he Beneficiary is required to provide weekly reports to the IT Director of the Petitioner on the status of work executed at client locations." However, it is not apparent how these statements apply to the proffered position, as the Beneficiary will not be working at "client locations."

While the Petitioner stated that the Beneficiary will report to its "IT Director," the Petitioner also stated that the Beneficiary will report to the company's "Vice President HR."⁷ Moreover, the mid-vendor letter states that "[w]hile engaged at [the end-client] [REDACTED] [the Beneficiary] reports to . . . the [end-client's] Residency Engagement/Partner Manager." The Petitioner has not clarified the relationship between its IT Director, Vice President of Human Resources, and the end-client's Residency Engagement/Partner Manager with respect to the supervision and control of the Beneficiary's work. Furthermore, the Petitioner has not explained the mid-vendor's reference to [REDACTED]

⁷ The Petitioner's offer letter to the Beneficiary also states that he "will report to the Human Resources department."

⁸ The reference to "[the end-client] [REDACTED]" suggests that the end-client may share a facility with another company, [REDACTED] whose relationship to the instant matter has not been explained.

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The above discrepancies and deficiencies, combined with the lack of detailed job duties, prevent us from understanding exactly what the Beneficiary will do for the period of time requested or where exactly the Beneficiary will be providing his services. Given this specific lack of evidence, the Petitioner has not corroborated who has or will have actual control over the Beneficiary's work or duties, or the condition and scope of the Beneficiary's services. In other words, the Petitioner has not established whether it has made a *bona fide* offer of employment to the Beneficiary based on the evidence of record or that the Petitioner, or any other company which it may represent, will have and maintain the requisite employer-employee relationship with the Beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the Petitioner to engage the Beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). Again and as previously discussed, there is insufficient evidence detailing where the Beneficiary will work, and the specific project and duties to be performed by the Beneficiary. Therefore, there is insufficient evidence to establish that the Petitioner qualifies as a United States employer.

IV. 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 I- Inc.*, ID# 16342 (AAO May 4, 2016)