



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

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

MATTER OF N-, INC.

DATE: MAY 31, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer company, seeks to temporarily employ the Beneficiary as a "Network Systems Administrator" 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 evidence of record is insufficient to establish that the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director's conclusion is erroneous.

Upon *de novo* review, the appeal will be dismissed.

I. 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.

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. The Proffered Position

On the Form I-129, the Petitioner described itself as a 23-employee “Technology Integration Services for applications and hardware” company. The Petitioner seeks to employ the Beneficiary as a “Network Systems Administrator” from October 1, 2015, to July 19, 2018. The Petitioner indicated that the Beneficiary will work off-site in Michigan.

The labor condition application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title 15-1142, “Network and Computer Systems Administrators,” from the Occupational Information

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Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position. The LCA lists the sole place of employment as the Michigan address.

In its cover letter, the Petitioner stated that the Beneficiary will work at the business premises of its "direct-client," located in [REDACTED] Michigan. The Petitioner listed the job duties of the proffered position, as follows:

- Diagnose hardware and software problems, and replace defective components.
- Perform data backups and disaster recovery operations.
- Maintain and administer computer networks and related computing environments, including computer hardware, systems software, applications software, and all configurations.
- Plan, coordinate, and implement network security measures in order to protect data, software, and hardware.
- Operate master consoles in order to monitor the performance of computer systems and networks, and to coordinate computer network access and use.
- Perform routine network startup and shutdown procedures, and maintain control record.

In response to the Director's request for evidence (RFE), the Petitioner submitted a description of the proffered duties with percentages of time, as follows (verbatim):

| | Tasks | Difficulty Level | % Time to be Spent |
|----|---|-------------------------|---------------------------|
| 1. | Responsible for designing, organizing, modifying, installing, and supporting computer systems. Designs and installs LANs, WANs, Internet and intranet systems, and network segments. | 5 | 25% |
| 2. | Install and support LANs, WANs, network segments, Internet, and intranet systems. | 4 | 15% |
| 3. | Install and maintain network hardware and software. Analyze and isolate issues. Monitor networks to ensure security and availability to specific users. | 4 | 15% |
| 4. | Evaluate and modify system's performance. Identify user needs. Determine network and system requirements. Maintain integrity of the network, server deployment, and security. | 4 | 15% |
| 5. | Ensure network connectivity throughout a company's LAN/WAN infrastructure is on par with technical considerations. Design and deploy networks, Perform network address assignment, Assign | 4 | 15% |

| | | | |
|----------------------------------|--|---|----|
| | routing protocols and routing table configuration. | | |
| 6. | Assign configuration of authentication and authorization of directory services. | 3 | 5% |
| 7. | Maintain network facilities in individual machines, such as drivers and settings of personal computers as well as printers. Maintain network servers such as file servers, VPNgateways, intrusion detection systems. | 4 | 5% |
| 8. | Administer servers, desktop computers, printers, routers, switches, firewalls, phones, personal digital assistants, smartphones, software deployment, security updates and patches. | 4 | 5% |
| Notes on Difficulty Level | | | |
| 1 | Novice | | |
| 2 | Some Exposure | | |
| 3 | Familiarity with Computers | | |
| 4 | Bachelor's | | |
| 5 | Master's | | |

The Petitioner stated that the proffered position requires a bachelor's degree in computer science, electronics, information systems, or a related field, plus "at least 3 years' experience in network operations on a managerial level."

In support of the petition, the Petitioner submitted two Employment Agreements with the Beneficiary which provide the following description of duties (verbatim):¹

[The Beneficiary] will be responsible for Diagnose hardware and software problems, and replace defective components. Perform data backups and disaster recovery operations. Maintain and administer computer networks and related computing environments, including computer hardware, systems software, applications software, and all configurations. Plan, coordinate, and implement network security measures in order to protect data, software, and hardware. Operate master consoles in order to monitor the performance of computer systems and networks, and to coordinate computer network access and use. Perform routine network startup and shutdown procedures, and maintain control record. Maintains system protocol by writing and updating procedures. Provides references for users by writing and maintaining user documentation; providing help desk support; training users. Maintains user confidence and protects operations by keeping information confidential. Prepares technical

¹ The Petitioner submitted an "amended" Employment Agreement in response to the Director's RFE which had noted several impermissible provisions relating to the LCA in the original Employment Agreement. Both Employment Agreements contain the same description of duties.

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reports by collecting, analyzing, and summarizing information and trends. Maintains professional and technical knowledge by attending educational workshops; reviewing professional publications; establishing personal networks; benchmarking state-of-the-art practices; participating in professional societies.

The Petitioner also submitted a letter from the claimed end-client stating that the Beneficiary will work at its business premises in Michigan as a “Network Systems Administrator for the project entitled [REDACTED].” The end-client letter lists job duties similar to those listed in the Petitioner’s RFE response. The letter also states that the company has “never recruited for [the proffered] position for less than a Bachelor’s degree in the following fields Computer Science, Computer Applications, Information Technology, Mathematics, Business or a closely related field [sic],” along with at least two to three years of related experience. In addition, the Petitioner submitted two “Assigned Personnel Forms” which describe the “Services to be performed” as “Support, Network Administration, Computer System Management, Hardware [sic] and Software Management.”

C. Analysis

As a preliminary matter, the end-client’s assertion that a bachelor’s degree in “Business” is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation.² 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. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as “Business,” does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor’s or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose business 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 139, 147 (1st Cir. 2007).³ Without more, a degree requirement in “Business,” alone, indicates

² While the Petitioner’s list of acceptable degrees does not contain a degree in business, the Petitioner has not explained why its requirements differ from the end-client’s requirements. Regardless, to the extent that the Petitioner’s descriptions differ from those provided by the end-client, we defer to the end-client’s descriptions. *See Defensor v. Meissner*, 201 F.3d at 387-388 (the petitioner-provided job duties and alleged requirements to perform those duties are irrelevant to a specialty occupation determination).

³ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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that the proffered position is not in fact a specialty occupation.

Moreover, it also cannot be found that the proffered position qualifies a specialty occupation because the Petitioner has not credibly and sufficiently demonstrated the substantive nature of the proffered position.⁴

The evidence of record does not contain a detailed explanation of the [REDACTED] project, such as the nature, complexity, and length of this particular project. In addition, none of the job duties contained in the record of proceedings is specifically explained within the context of the [REDACTED] project. Instead, the evidence of record contains generalized, duplicative, and inconsistent descriptions of the work to be performed by the Beneficiary.

For instance, the Assigned Personnel Forms signed by the Petitioner and the end-client simply describe the “Services to be performed” as “Support, Network Administration, Computer System Management, Hardware [sic] and Software Management.” No further details about these job duties, such as what is meant by the vague term “[s]upport” or what computer system(s) and software the Beneficiary will work on, were provided. The Assigned Personnel Forms do not specifically reference the [REDACTED] project.

The end-client letter contains substantially the same job duties as those found in the Petitioner’s RFE response. However, these job duties are described in broad and duplicative terms. For example, the Petitioner’s RFE response indicated that the Beneficiary will spend approximately 25% of his time on the duties of “designing, organizing, modifying, installing, and supporting computer systems” and “[d]esigns and installs LANs, WANs, Internet and intranet systems, and network segments.” The Petitioner then indicated that the Beneficiary will spend another 15% of his time on “[i]ninstall and support LANs, WANs, network segments, Internet, and intranet systems,” and yet another 15% on “[i]ninstall and maintain network hardware and software.” The Petitioner also indicated that the Beneficiary will spend separate percentages of time on the duties of “[m]aintain integrity of the network, server deployment, and security” and “[m]onitor networks to ensure security and

The courts and the agency consistently have stated that, although a general-purpose bachelor’s degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int’l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 ([Comm’r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

⁴ The California Secretary of State website indicates that the Petitioner’s corporate status has been suspended. That is, the Petitioner’s powers, rights and privileges, including the right to use its corporate name in California, were suspended. *See* attached print-outs. The Petitioner’s corporate status raises questions regarding whether the Petitioner’s offer of employment to the Beneficiary is *bona fide*.

availability to specific users.” Neither the end-client nor the Petitioner has adequately distinguished these sets of duties from one another, even though they account for different percentages of the Beneficiary’s time.

Furthermore, the majority of the proffered duties found in the Petitioner’s cover letter appear to have been copied directly from the Occupational Information Network (O*NET) Details Report for the occupation “Network and Computer Systems Administrators.” See O*NET Details Report for “Network and Computer Systems Administrators,” <http://www.onetonline.org/link/details/15-1142.00> (last visited Mar. 17, 2016). This type of description may be appropriate when defining the range of duties that may be performed within an occupational category, but it does not adequately convey the substantive work that the Beneficiary will actually perform and, thus, generally cannot be relied upon by the Petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by the beneficiary in the context of that petitioner’s or end-client’s business operations, as well as demonstrate 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. Simply submitting a generic job description that is not specific to the Beneficiary or the end-client at hand is insufficient to establish the substantive nature of the proffered position.

In addition, the Petitioner’s Employment Agreements with the Beneficiary contain duties that are not found in the end-client letter or the Petitioner’s RFE response. For example, the Employment Agreements list duties such as “[p]rovides references for users by writing and maintaining user documentation; providing help desk support; training users . . . [and] [p]repare technical reports by collecting, analyzing, and summarizing information and trends.” These duties do not appear in the end-client letter or RFE response, even though the RFE response purports to have accounted for 100% of the Beneficiary’s time.

With regard to the first set of duties listed in the RFE response, the Petitioner indicated that these duties are a “Difficulty Level” 5, which requires a master’s degree. However, the Petitioner has never claimed that the proffered position requires a master’s degree. Nor has the Petitioner claimed that positions located within the “Network and Computer Systems Administrators” occupational classification normally require a master’s degree. Rather, the Petitioner repeatedly states that a bachelor’s degree is the normal minimum requirement for this as well as other positions within the “Network and Computer Systems Administrators” occupational classification. We observe that the Petitioner designated the proffered position as a Level I (entry) position, which indicates that the proffered position is a comparatively low, entry-level position relative to others within the occupation.⁵ The Petitioner’s designation of this position as a Level I, entry-level position further undermines the Petitioner’s characterizations of the proffered position.⁶

⁵ 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

“[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. “Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.” *Id.* at 591.

Finally, we note the vague statements by the Petitioner and the end-client regarding the Beneficiary’s work duties and location. The Assigned Personnel Forms list the Beneficiary’s “Primary work location” as the end-client’s Michigan premises. However, the use of the word “primary” denotes that the Beneficiary may also be assigned to perform work at other, unspecified locations, and that he may be assigned to perform job duties other than those disclosed in the petition. The Petitioner’s Employment Agreements with the Beneficiary contain similar provisions indicating that the Beneficiary may be assigned to perform undisclosed work, such as that the Beneficiary’s “duties shall be rendered at [Petitioner’s] business premises or at such other places as the [Petitioner] may require” and that he “shall also perform such other duties in the ordinary course of business as performed by other persons in similar such positions, as well as such other reasonable duties as may be assigned from time to time by the [Petitioner].” Furthermore, the Petitioner states in its cover letter that it has “enough resources and financial strength to continue paying the beneficiary even without specific project/s” and that “[i]f required, the petitioner can place the beneficiary in place of any one of those contractor positions.”⁷ When considered as a whole, 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.

See 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.

⁶ Not only does the Petitioner claim to require a master’s degree to perform a substantial portion of the proffered duties, but it also claims to require “at least 3 years’ experience in network operations on a managerial level.” The Petitioner’s designation of this position as a Level I, entry-level position undermines the claim that the proffered position requires minimum entry requirements above that normally required for 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.

⁷ Speculative employment is not permitted in the H-1B program. USCIS regulations require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new

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evidence of record lacks a sufficient, detailed explanation of all the work the Beneficiary will be assigned to perform during the entire validity period requested, including the location(s) of such work and the specific job duties to be performed.

For all of the above reasons, we find the evidence of record insufficient to demonstrate the substantive nature of the proffered position and its constituent duties. Consequently, 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 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 evidence does not satisfy 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. The appeal will be dismissed and the petition denied for this reason.

II. CONCLUSION

The Petitioner has not established that the proffered position, more likely than not, qualifies as a specialty occupation. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

ORDER: The appeal is dismissed.

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set of facts. See 8 C.F.R. § 103.2(b)(1); see also *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).