



**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 “SAP consultant” 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: (1) the proffered position qualifies as a specialty occupation; (2) the Beneficiary is qualified to serve in a specialty occupation position in accordance with the applicable statutory and regulatory provisions; and (3) the labor condition application supports the petition.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director’s conclusions are 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.

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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, Petition for a Nonimmigrant Worker, the Petitioner described itself as a 22-employee software services company located in [REDACTED] California. The Petitioner seeks to employ the Beneficiary as a “SAP consultant” from October 1, 2015, to July 23, 2018, at a salary of \$63,000 per year. 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 15-1121, “Computer Systems Analysts,” from the Occupational Information Network (O*NET).

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The LCA further states that the proffered position is a Level II position. The LCA lists the sole place of employment as the Michigan address.

In its cover letter, the Petitioner stated that the Beneficiary “will be designated to primarily work at [the Petitioner’s] End-Client’s business premises located [in] ██████████ MI ██████████. This assignment is based on [the Petitioner’s] direct contract with [the End-Client].” The Petitioner provided a description of the proffered position, which was later broken down into percentages of time in response to the Director’s request for evidence (RFE), as follows (verbatim):

	Tasks	Difficulty Level	% Time to be Spent
1.	Responsible for working with the SAP team Planning and establishing after go-live activities including ongoing application support.	3	10%
2.	Working on End-to-end Implementation, Upgrades, Installations, Configurations, Post-Installation Activities, OS/DB Migration, Performance Tuning, Documentation, Defining SLA, Transition, and Managing Delivery of all SAP.	4	20%
3.	Proactively identifying issues that may negatively impact a projects deliverables.	3	10%
4.	Participating in 24*7 Support of applications and translating business requirements into technical requirements and implementing the solution.	4	10%
5.	Performing analysis, definition, creation and implementation of technical application standards and documentation.	3	5%
6.	Managing the delivery of SAP OS/DB migrations from one hardware platform to another within defined time and adhered to quality standards.	4	20%
7.	Participating in Proof of Concept Development, HANA administration and monitoring, HANA revision and SPS upgrade, HANA studio and client installations, Monitoring of SAP HANA database from HANA studio and OS level commands, Performance monitoring for SAP HANA studio and Performance tuning,	4	10%
8.	Activating and deactivating services using SAP HANA studio, Performing OS Migration of the Entire R3, BI, PI Landscape from	4	10%

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	HP-UX to Linux Environment, Handling Runtime issues during the Export and Import and Upgrade,		
9.	Monitoring the systems from the SAP Solution Manager, Configuring the OSS settings, and Coordinating with off-shore Basis Support Team.	4	5%
Notes on Difficulty Level			
1	Novice		
2	Some Exposure		
3	Familiarity with Computers		
4	Bachelor's		
5	Master's		

In support of the petition, the Petitioner submitted an "Assigned Personnel Form" which describes the "Services to be performed" as "Design, Coding and unit testing core components and client customization of the product." The Petitioner also submitted a letter from the end-client stating that the Beneficiary will work at its business premises in Michigan "as an SAP Consultant for the project entitled [REDACTED]". The end-client letter lists job duties similar to those listed in the Petitioner's cover letter and RFE response.

Furthermore, the Petitioner submitted an Employment Agreement with the Beneficiary which contains a lengthy description of duties, as cited below in part (verbatim):

[The Beneficiary] will be responsible for Gathering the security requirements in Preparation Phase with touch base with Customer. Prepared the Security blue print according to the customer requirements and policies. Interacting with the customer during realization phase. Created Project team roles and provided access to Project team based on the equipment. Prepared Role Matrix by gathering the requirements from BPDDs and FTDS Created Business and end user roles through BRM in GRC 10.0 Performed Unit testing of roles and transported them to Production Handled User & role administration using ARM & BRM in GRC 10.0. Configured MSMP work flow for ARM and BRM in Access Control. Prepared the end users access and trained them based on their functionality. Built the SOD Rule set as per customer business specifications and uploaded them to production. Performed the risk analysis for roles and users using ARA in GRC 10.0 Creation of users and roles based on Customer predefined process Resolving authorization issues for Project team and also end users. Performed security testing during SIT2 and made the security section ready as part of preparation phase. Configured de-centralized functionality EAM in GRC Supported the SAP Implementation team during go-live Resolved Access and authorization issues during post go-live [REDACTED] is a Global leader in automobile sector with operations world wide. In the Latin America, Africa, Middle

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Project/Customer: [REDACTED] basis administration
and Health checks. User administration and Authorization support

C. Analysis

As a preliminary matter, the evidence of record does not consistently demonstrate the proffered position's minimum entry requirement. The end-client asserts that it requires a minimum of a bachelor's degree in "Computer Science, Computer Applications, Information Technology, Mathematics, Business or a closely related field." The Petitioner has variously stated that it requires a minimum of a bachelor's degree in "Computer Science, Computer Engineering, Computer Information Systems, Information Technology, or any field of Engineering or related field," and that "the position of SAP Consultant require[s] a minimum educational qualification of a baccalaureate degree in Business, Computer Science, Math, Engineering, Information Technology, Accounting, or related field."¹ It is therefore not clear whether the minimum entry requirement for the proffered position can be satisfied by bachelor's degrees in "Business," "Accounting," and "any field of Engineering."

If the proffered position can be satisfied by a degree in business, this indicates that the proposed position does not qualify as a specialty occupation. 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," 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).

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 at 147.² Without more, a degree requirement in "Business," alone, indicates that the proffered

¹ The Petitioner submitted vacancy announcements for positions it claims are similar to the proffered position, some of which also allow degrees in "Business," "Business Adm.," and "Bachelor's Degrees with an emphasis on . . . business, or accounting."

² Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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)

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position is not in fact a specialty occupation.

If the proffered position can be satisfied by a degree in accounting, this also indicates that the proffered position does not qualify as a specialty occupation. In general, provided the specialties are closely related, e.g., computer science and information technology, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as computer science and accounting, would not meet the statutory requirement that the degree be "in the specific specialty (or its equivalent)," unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner has not done so here.

Thus, based on the stated educational requirements, we cannot find that the proffered position qualifies as a specialty occupation. Moreover, we cannot find that the proffered position qualifies as a specialty occupation because the Petitioner has not credibly and sufficiently demonstrated the substantive nature of the proffered position.³

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, the job duties are not 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 Form signed by the Petitioner and the end-client simply describes the services to be performed by the Beneficiary as "Design, Coding and unit testing core components and client customization of the product."⁴ No further details about these job duties or about what "product" the Beneficiary will work on were provided in this form. The Assigned Personnel Form does not contain any references to any particular project(s) for the end-client.

(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.

³ 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*.

⁴ This form lists the Beneficiary's end-date as October 12, 2018, even though the Petitioner requested a validity period ending on July 23, 2018. The Petitioner did not request the maximum three years, which would have ended on September 30, 2018.

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The end-client letter states that the Beneficiary will be working on the [REDACTED] project, but it also does not provide any additional information and explanation about this particular project. Furthermore, the end-client letter (which contains substantially the same job duties as found in the Petitioner's cover letter and RFE response) describes the proffered duties in broad and generalized terms that do not adequately convey the specific tasks to be performed. To illustrate, the Beneficiary will purportedly be "[r]esponsible for working with the SAP team" and "[p]lanning and establishing after go-live activities including ongoing application support." However, there is no further explanation of what specific tasks the Beneficiary will perform (e.g., what is meant by the vague phrases "[r]esponsible for working with" and "application support"), nor is there any further explanation of what specific "application" the Beneficiary will be supporting. As another example, the Petitioner has not elaborated upon what specific tasks or applications are involved in the duty of "[p]articipating in 24*7 Support of applications." Notably, the end-client letter does not expressly contain any job duties involving "Design, Coding and unit testing," which are the duties stated in the Assigned Personnel Form.

The evidence of record contains other inconsistencies regarding the proffered duties as well. In particular, the Petitioner's Employment Agreement with the Beneficiary describes the proffered job duties as including "[REDACTED] is a Global leader in automobile sector with operations world wide. In the Latin America, Africa, Middle Project/Customer: [REDACTED] [REDACTED] The Petitioner has not explained the meaning of this particular duty, and the relationship (if any) between [REDACTED] the end-client, and the Petitioner. The Petitioner's Employment Agreement also contains repeated references to [REDACTED] among other undefined terms and acronyms. The Petitioner has not explained what [REDACTED] is, and how it relates to the [REDACTED] project. "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). We note that many of the proffered duties listed in the Employment Agreements are worded in the past tense. This, along with the unexplained references to [REDACTED] and other undefined terms and acronyms, lead us to question the credibility of this document.

"[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.

⁵ While petitioner-provided job duties are generally outside the scope of consideration for establishing whether the position qualifies as a specialty occupation, we are considering the Petitioner's descriptions of the duties here for the purpose of highlighting the inconsistencies and deficiencies in the evidence of record. See *Defensor v. Meissner*, 201 F.3d at 387-88 (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).

The evidence of record contains other vague statements by the Petitioner and the end-client regarding the Beneficiary's "primary" work duties and location that further lead us to question the nature of the proffered position. The Assigned Personnel Form lists the Beneficiary's "Primary work location" as the end-client's Michigan premises. The Petitioner also states in its cover letter that the Beneficiary "will be designated to primarily work at [the Petitioner's] End-Client's business premises." However, the use of the words "primary" or "primarily" denotes that the Beneficiary may also be assigned to perform work at other, unspecified locations, and that she may be assigned to perform job duties other than those disclosed in the petition. The Petitioner's Employment Agreement with the Beneficiary contains other 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]." When considered as a whole, the 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.

On appeal, the Petitioner asserts that it has submitted evidence that the Beneficiary "has attained the equivalent of a Bachelor's Degree in Computer Information Systems from an accredited institution of higher education in the United States. Therefore, it is to be duly noted that Petitioner has met the requirements for 'specialty occupation' under INA Section 214(i)(1)." However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself qualifies as a specialty occupation. Thus, regardless of the Beneficiary's claimed qualifications, we cannot find that the proffered position qualifies as a specialty occupation for the reasons discussed above. Accordingly, the appeal will be dismissed.

II. BENEFICIARY QUALIFICATIONS

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position. 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, it cannot be found that the proffered position qualifies as a specialty occupation. Therefore, we need not and will not address the Beneficiary's qualifications further.

III. PAYMENT OF REQUIRED WAGES

Finally, the Director found that the Petitioner has not demonstrated that it will comply with the terms and conditions of the LCA. Again, however, since the proffered position does not qualify as a specialty occupation, we need not address this additional ground further, except to note that the clause making prohibited wage deductions from its Employment Agreement with the Beneficiary remains in its agreement. *See* section 101(a)(15)(H)(i)(b) of the Act; 20 C.F.R. § 655.731(c).

IV. 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). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of N-, Inc.*, ID# 16485 (AAO May 31, 2016)