



**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 an “application systems engineer” 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.

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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, the Petitioner described itself as a 33-employee software services company located in [REDACTED] California. The Petitioner seeks to employ the Beneficiary as an “application systems engineer” from October 1, 2015, to September 30, 2018, at a salary of \$76,000 per year. The Petitioner indicated that the Beneficiary will work off-site in [REDACTED] California.

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 I position. The LCA lists the sole place of employment as the [redacted] address.

The Petitioner submitted a cover letter and an end-client letter, both of which contain the following list of job duties for the proffered position:

- Collaborate with Business users and Architects in identifying specific requirements for building appropriate Solutions
- Coordinate and assist in Development, Quality Assurance and User Acceptance testing when applicable and coordinate with cross functional teams like Dev, test and TAC to ensure the smooth delivery of product
- Write Verification and Validation GAT Procedures for [end-client] modules
- Execute the written procedures in Lab by configuring the devices to generate the Alarms using CLI and verifying the messages using Splunk and Traps in NMS TIP
- Log, track and revalidation of issues found during the SNG/EECP and for Atlas Customer Portal
- Assist in troubleshooting production issues; create documented procedures for knowledge transfer

In response to the Director's request for evidence (RFE), the Petitioner provided another description of the proffered duties, with percentages of time on each duty, as follows (verbatim):

	Tasks	Difficulty Level	% Time to be Spent
1.	Lead and synchronize teams of information systems professionals in the maturity of software and integrated information systems, process control software and additional embedded software control systems. Provide guidance and leadership to new engineers	4	30%
2.	Evaluate, troubleshoot, document, upgrade and build up maintenance procedures for operating systems, communications environments and software	4	30%
3.	Frequently work together with customer and functional colleagues in addition to management.	4	10%
4.	Examine and select methods and procedures used for obtaining solutions. Research, appraise and create technical information to design	4	10%
5.	Develop and test automated systems, Develop data, procedure and network models to optimize structural design and to assess the	3	10%

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	performance and consistency of designs		
6.	Plan, design and organize the progress, installation, integration and function of computer-based systems. Follow the corporation regulations for application implementation	4	10%
Notes on Difficulty Level			
1	Novice		
2	Some Exposure		
3	Familiarity with Computers		
4	Bachelor's		
5	Master's		

C. Analysis

Upon review of the record of proceedings, we cannot find that the proffered position qualifies as a specialty occupation because the Petitioner has not sufficiently demonstrated the substantive nature of the proffered position.¹

The evidence of record does not contain a detailed explanation of what "project" the Beneficiary will be assigned to perform for the end-client. The end-client letter simply states that the Beneficiary "is currently engaged in a critical project with our company," but does not provide any further details such as the name and nature of this "critical project."² Similarly, the mid-vendor letter states that it is "executing the current project in [the end-client]," but does not specifically identify any particular project, either.

In its RFE response, the Petitioner stated that it attached a "work schedule" which "lists out all the projects to be handled, job duties to be performed, work location information, etc." However, the attached "work schedule" (entitled "Project Schedule") is an appendix to an unspecified contract or document that was not explained or submitted for the record. We therefore cannot determine the relevance of this "Project Schedule" to the instant matter at hand. We observe that the "Project Schedule" makes apparent references to other companies, e.g., [REDACTED] and [REDACTED] whose roles within the contractual relationship between the end-client, mid-vendor, and the Petitioner have not been identified. We also observe that this document does not list "all the projects to be handled, job duties to be performed, work location information, etc.," as claimed by the Petitioner. While this

¹ 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*.

² The Petitioner has not submitted a copy of the actual contractual agreement between the end-client and the Petitioner for the Beneficiary's services.

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document contains a brief outline of scheduled activities, such as [redacted] will be taking delivery of ten (10) Aircraft starting in July, 2015” and [redacted] is expected to begin in late summer 2015 with Beta Period 1,” there are no detailed explanations of what specific project these activities relate to, what specific job duties will be performed, and who will perform these job duties.

The Petitioner also submitted technical documentation produced by the end-client for the following projects: (1) [redacted] (2) [redacted] (3) [redacted]

[redacted] (4) [redacted] (5) [redacted] (6) [end-client] Use Case Description”; and (7) [redacted] for [redacted] Again, however, the Petitioner has not explained the relevance of these technical documents to the matter at hand. None of these technical documents specifically reference the role of the Beneficiary or an “Applications Systems Engineer.” The Petitioner also has not explained where and how the proffered job duties, such as “[l]og, track and revalidation of issues found during the SNG/EECP and for Atlas Customer Portal,” fit into these various projects. These technical documents do not contain the stated job duties for the proffered position, nor do they specifically refer to “SNG/EECP,” “Atlas Customer Portal,” “NMS TIP,” or any of the other terms and acronyms found in the job descriptions.³

Conversely, the job duties provided by the Petitioner and the end-client are not specifically explained within the context of the above-listed seven projects for which the Petitioner submitted technical documentation. Instead, the job duties provided by the Petitioner and the end-client are stated in broad and generalized terms that do not adequately describe the work to be performed by the Beneficiary. To illustrate, the end-client letter lists the proffered duty of “[c]ollaborate with Business users and Architects in identifying specific requirements for building appropriate Solutions.” There is no further explanation of what specific tasks the Beneficiary will perform, i.e., what is meant by “[c]ollaborate, with” or what “Solutions” the Beneficiary will be involved in building. The end-client letter also lists the job duty of “[c]oordinate and assist in Development, Quality Assurance and User Acceptance testing when applicable and coordinate with cross functional teams like Dev, test and TAC to ensure the smooth delivery of product.” Again, there is no further explanation of what is meant by the vague terms “[c]oordinate” and “assist,” and what “product” the Beneficiary will be involved in delivering.

Notably, the Task Orders executed between the mid-vendor and the Petitioner simply describe the nature of the work to be done by the Beneficiary as “Systems Engineer.” These Task Orders further state that “[t]he exact nature of work will be determined by the on-site Reporting Manager based on project requirements and consultant skills.” This language leads us to further question the nature of the work that the Beneficiary will actually perform.

³ Some of the project documents contain tables summarizing the terminology and acronyms used. We did not find any references to “SNG/EECP,” “Atlas Customer Portal,” or “NMS TIP” within these tables, or elsewhere in the documents.

In response to the Director's RFE, the Petitioner stated that the Beneficiary will spend thirty percent of his time on duties including "[l]ead and synchronize teams of information systems professionals in the maturity of software and integrated information systems." Not only is this job duty vaguely worded, but it also appears inconsistent with the Level I (entry) wage level selected here. In designating the proffered position at a Level I wage rate, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation.⁴ That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the Beneficiary is only required to have a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. 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. The Petitioner's designation of the proffered position as a Level I, entry-level, position is inconsistent with the above job duty, and raises additional questions about the nature of the proffered position."⁵

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. We therefore 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;

⁴ 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.

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.

⁵ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is a "lead" position 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.

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

ORDER: The appeal is dismissed.

Cite as *Matter of N-, Inc.*, ID# 17138 (AAO May 31, 2016)