



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

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

MATTER OF P-I-T- CORP.

DATE: SEPT. 28, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an information technology firm, seeks to temporarily employ the Beneficiary as a “computer systems analyst” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not demonstrate that the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the evidence is sufficient to satisfy all evidentiary requirements.

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

I. 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) 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:

(b)(6)

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- (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).

II. PROFFERED POSITION

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner stated that the Beneficiary would work at its [REDACTED] New Jersey location. The labor condition application (LCA) is not certified for any other area.

On a letter submitted with the Form I-129, the Petitioner provided the following description of the duties of the proffered position:

- Expand or modify system to serve new purposes or improve work flow.
- Test, maintain, and monitor computer programs and systems, including coordinating the installation of computer programs and systems.
- Develop, document and revise system design procedures, test procedures, and quality standards.
- Provide staff and users with assistance solving computer related problems, such as malfunctions and program problems.
- Review and analyze computer printouts and performance indicators to locate code problems, and correct errors by correcting codes.
- Consult with management to ensure agreement on system principles.
- Confer with clients regarding the nature of the information processing or computation needs a computer program is to address.

- Read manuals, periodicals, and technical reports to learn how to develop programs that meet staff and user requirements.
- Coordinate and link the computer systems within an organization to increase compatibility and so information can be shared.
- Determine computer software or hardware needed to set up or alter system.

In response to a request for evidence (RFE) issued in this matter, the Petitioner provided the following amended duty description:

- Modify its existing software to correct errors, allow it to adapt to new hardware, and improve performance (25%).
- Develop and direct software system testing and validation procedures, programming, and documentation (10%).
- Confer with systems analysts, engineers, programmers and others to design system solutions and obtain information on project limitations and capabilities, performance requirements and interfaces (5%).
- Analyze user needs and software requirements to determine feasibility of design within time and cost constraints (10%).
- Design, develop and modify software systems, using scientific analysis and mathematical models to predict and measure outcome and consequences of design (10%)
- Store, retrieve, and manipulate data for analysis of system capabilities and requirements (5%)
- Coordinate software system installation and monitor equipment functioning to ensure specifications are met (5%).
- Obtain and evaluate information on factors such as reporting formats required, costs, and security needs to determine hardware configuration (10%).
- Research and examine current systems and consulting users by liaising with [the Beneficiary's] colleagues such as systems analysts and designers (5%).
- Design and write software, documentation and operating manuals (5%)
- Test and modify systems to ensure that that [*sic*] they operate reliably by providing support and responding to feedback, fault-finding, diagnosing and fixing system controls (10%).

As to the education required by the proffered position, the Petitioner stated, “[W]e always require the services of an individual with a minimum of a Bachelor’s degree or its equivalent in Computer Science, Computer Applications, Commerce, Business Administration, or a related field.”

III. 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

Initially, we observe that the Petitioner has not indicated that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. The Petitioner stated that the proffered position requires at least a bachelor's degree in "Computer Science, Computer Applications, Commerce, Business Administration, or a related field." This indicates that a bachelor's degree in business administration, with no further specification, would be a suitable educational preparation for the proffered position.

The requirement of a bachelor's degree in business administration is inadequate to establish that a 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 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 administration, 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 explained above, 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. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, 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).

Further, we observe that, rather than providing a detailed description of the specific duties of the proffered position, the Petitioner largely copied duty descriptions from O*NET. Specifically, the first duty description was taken directly from O*NET's job description for "Computer Systems Analysts"³ and most of the duties provided in response to the RFE was taken from "Software Developers, Applications."⁴ 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

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 A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field, or a bachelor's or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

³ *See* <http://www.onetonline.org/link/summary/15-1121.00?redir=15-1051.00> (last visited Sept. 26, 2016).

⁴ *See* <http://www.onetonline.org/link/summary/15-1132.00> (last visited Sept. 26, 2016).

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substantive work that the Beneficiary will perform within the Petitioner's business operations and, thus, generally cannot be relied upon by a 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 a beneficiary in the context of the Petitioner's business operations, as well as 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 portion of the description of the Beneficiary's duties that was not copied verbatim from O*NET lacks the specificity and detail necessary to support the Petitioner's assertion that the position is a specialty occupation. The general description provided about the proffered position and its constituent duties is exemplified by the Petitioner's assertion that the Beneficiary will "research and examine current systems and consulting users by liaising with . . . colleagues" and "design and write software." The Petitioner did not further elaborate on the specific tasks, methodologies, and applications of knowledge that would be required in furtherance of these overarching duties. Without providing a detailed description of the specific duties of the proffered position, as they would be performed in the context of the Petitioner's business operations, the Petitioner is unable to establish the substantive nature of the work the Beneficiary would actually perform if the visa petition were approved.

We further note that the record of proceedings lacks documentation regarding the Petitioner's business activities and the actual work that the Beneficiary will perform to sufficiently substantiate the claim that the Petitioner has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. The Petitioner submitted one-page project summary for the [REDACTED] project that the Beneficiary will work on as a computer systems analyst. The summary indicated that the project will be a "2-3 year ongoing in-house project." The summary lists two phases and a developmental approach. Upon review, we note that the documentation does not explain how a computer systems analyst would assist on this project, or specifically name the Beneficiary as personnel to assist with this project. In addition, the project summary is vague and does not clearly explain how the two phase will take two to three years to complete. The Petitioner also did not submit any contracts or corroborating evidence that this project has been contracted and that there are sufficient funds to continue for the entire duration of the project. Thus, the Petitioner did not provide documents to substantiate its ongoing project for the H-1B validity period⁵.

⁵ The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The

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“[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)).

That the Petitioner did not establish the substantive nature of the work to be performed by the Beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for 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.

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), and because the Petitioner has not indicated that the proffered position requires a minimum of a bachelor’s degree in a specific specialty or its equivalent, it has not demonstrated that the proffered position qualifies as a specialty occupation.

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 P-I-T- Corp.*, ID# 124863 (AAO Sept. 28, 2016)

Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,419-20 (proposed June 4, 1998) (to be codified at 8 C.F.R. pt. 214). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).