



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

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

MATTER OF MNC-D-C-&L-C-

DATE: SEPT. 29, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a Chinese day care and learning center, seeks to temporarily employ the Beneficiary as an "early childhood creative programs director" 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, California Service Center, denied the petition. The Director concluded that the Petitioner did not sufficiently establish that the proffered position qualifies as a specialty occupation. Thereafter, the Petitioner filed a timely motion to reconsider, and the Director affirmed its decision to deny the petition. The matter is now before us on appeal.

Upon review, we will dismiss the appeal.

I. LAW

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as an “early childhood creative programs director.” The Petitioner provided the following job duties for the position:

(Education Related Tasks) (40%)

- Monitor, evaluate, or record artistic and creative training activities or program effectiveness, by assessing the feedback of parents, referral sources, and inquiries for future clients as a result of these activities
- Obtain feedback and constantly communicate with clientele’s families, teachers, and instructors as future creative and artistic programs are developed, and current programs improved. Reports and spreadsheets are created to assess which issues and concerns should be addressed. An analysis also of what works are also something she would report on so that we could focus on that. We aim to zone in on programs and strategies that work. And she’s there to analyze and report these as we tweak our program structure.
- Coordinate our company’s afterschool creative courses and programs, making sure they are properly ran efficiently (the time of the programs as they tie to common dismissals of children from their respective schools, weather and school year related events and possibilities)
- Evaluate training materials prepared by instructors, such as outlines, text, flashcards, videos, and handouts;

(Art Related Tasks) (20%)

- Review Chinese historical documents, art, Chinese calligraphy, photos, and videos for new course material development;
- Plan and develop for our company's annual Summer Day Camp arts program;
- Organize and develop, or obtain, training procedure manuals and guides and course material such as handouts and visual materials;
- Develop after-school creative and artistic courses by doing extensive research on developments, but also involving an understanding of art history, and by contacting various professional and teachers for the course planning.

(Supervisory Related Tasks - "Director") (20%)

- Supervise all teachers in various artistic and creative programs, ensuring that course and lesson plans are followed and implemented.
- Assess training need through surveys, interviews with employees, focus groups, or consultation with managers, instructors, or parents;
- Develop alternative training methods if expected improvements are not seen;
- Present information using a variety of instructional techniques or formats, such as role playing, simulations, team exercises, group discussions, videos, or lectures;
- Select and assign instructors to conduct training.

According to the Petitioner, the position requires a bachelor's degree in art education or its equivalent.

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.¹ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor's

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

² 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.

(DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Training and Development Specialists” corresponding to the Standard Occupational Classification code 13-1151.⁴

We reviewed the chapter of the *Handbook* entitled “Training and Development Specialists,” including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that “Training and Development Specialists” comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

The subchapter of the *Handbook* entitled “How to Become a Training and Development Specialist” states the following about this occupational category:

Training and development specialists need a bachelor's degree. Specialists may have a variety of education backgrounds, but many have a bachelor's degree in training and development, human resources, education, or instructional design. Others may have a degree in business administration or a social science, such as educational or organizational psychology.

In addition, as technology continues to play a larger role in training and development, a growing number of organizations seek candidates who have a background in information technology or computer science.

³ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁴ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.*

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Training and Development Specialists," <http://www.bls.gov/ooh/business-and-financial/training-and-development-specialists.htm#tab-4> (last visited Sept. 28, 2016).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates other paths for entry, including less than a bachelor's degree in a specific specialty. While the *Handbook* states that training and development specialists need a bachelor's degree, it also states that "may have a variety of education backgrounds." The *Handbook* further states that "many have a bachelor's degree in training and development, human resources, education, or instructional design." It also states that "[o]thers may have a degree in business a social science, such as educational or organizational psychology." The *Handbook's* recognition that general, non-specialty "background" in various fields is sufficient for entry into the occupation suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) (stating that "[t]he mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility"). Thus, while a general-purpose degree or a degree in any discipline 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. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Thus, the *Handbook* does not support the claim that the occupational category of training and development specialists is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did (which it does not), the record lacks sufficient evidence to support a finding that the particular position proffered here (an entry-level training and development specialist position relative to others within the occupation – as indicated on the LCA), would normally have such a minimum, specialty degree requirement, or its equivalent.

In addition, in response to the request for evidence (RFE), the Petitioner states that O*NET assigns the training and development specialist occupation a Job Zone Four rating. According to O*NET, "[m]ost of these occupations require a four-year bachelor's degree, but some do not." Notably, O*NET is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O*NET's Job Zone designations make no mention of the specific field of study from which a degree must come. As was noted previously, we interpret 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. Thus, a designation of Job Zone Four does not demonstrate that at least a bachelor's degree in a *specific specialty* is normally the minimum requirement for entry, and does not, therefore, demonstrate that a position so designated qualifies as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

Upon review of the totality of the evidence in the entire record of proceedings, the Petitioner has not provided documentation from another probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

B. Second Criterion

The second criterion presents two, alternative prongs: “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[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty or its equivalent. Nor are there any submissions from a professional association in the Petitioner’s industry stating that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor’s degree in a specific specialty or its equivalent for entry into those positions.

Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

The Petitioner states it "has shown that its particular position is so complex and unique that it can be performed only by an individual with a degree, based not just on the initial evidence that was submitted, but on the evidence submitted on the Request for Evidence." Upon review of all of the documentation submitted, the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

The Petitioner submitted several documents regarding its school activities; after school program, summer program, curriculum, and organizational structure to "show the scope and complexity of the position." The Petitioner states that the Beneficiary will supervise lead teachers and assistant teachers. In addition, the Beneficiary will view the school program in a "macro perspective – looking at developing learning tools, the psychology of children in understanding various art exercises, specific activities that stimulate thinking etc." However, the Petitioner did not demonstrate that the duties of an early childhood creative programs director for this day care program is so complex that it would require the Beneficiary to hold a bachelor's degree in a specific specialty.

In addition, the Petitioner did not demonstrate how the duties of the proffered position as described in the record require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. The Petitioner stated that 60 percent of the job duties are art and education related and for that reason it is very important that the Beneficiary obtain a degree in art education. However, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the Petitioner did not demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Consequently, as the Petitioner did not demonstrate how the proffered position is so complex or unique relative to other training and development specialist positions that can be performed by a

person without at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The Petitioner claims that the Beneficiary is well-qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

On appeal, the Petitioner also states that it has a "practice of hiring teachers who have a Bachelor's Degree, and such, it is reasonable to hire someone with at least a Bachelor's Degree for the position of Early Childhood Creative Program Director, a position that would actually manage teachers/instructors, all of whom have Bachelor's Degrees themselves." The Petitioner submitted educational credentials for two current lead teachers and one assistant teacher. Upon review of the educational certificates, it appears that the assistant teacher received a bachelor's degree in economics and the two lead teachers received a bachelor's degree in early childhood education and broadcasting. Thus, it appears that the Petitioner does not require a degree in a specific specialty. In addition, the Petitioner submitted the educational certificates obtained abroad and did not submit a credential evaluation for each individual. Further, the Petitioner submitted educational certificates for two out of three lead teachers, and only one out of five assistant teachers, thus the Petitioner has not established that it requires a bachelor's degree for all lead teachers and assistant teachers. Finally, the educational certificates for the two previous teachers are also lacking a credential evaluation and the Petitioner did not submit any corroborating evidence that these individuals were employed by the Petitioner and the positions they held for the Petitioner. "[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)).

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other

words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). The Petitioner did not provide evidence of its hiring history for the position of training and development specialist. The Petitioner claimed that some of the employees supervised by the Beneficiary obtained a bachelor's degree but it did not provide specific information regarding the proffered position itself.

Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

On appeal, the Petitioner also claims that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent. The Petitioner states that "as an early childhood educator, [the Beneficiary] will be in a position to shape the children's cognitive, social and emotional development during their formative years – helping them build a foundation of learning that will support them as they progress through their education." The Petitioner further states that the Beneficiary will have supervisory tasks and will be second in command of the operations. The Beneficiary will supervise three lead teachers and five assistant teachers, and teachers from the after school program.

We incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category.⁵ The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

⁵ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique 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.

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position 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 MNC-D-C-&L-C-*, ID# 123301 (AAO Sept. 29, 2016)