



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

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

MATTER OF I-F- CO.

DATE: SEPT. 30, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a commercial credit company, seeks to temporarily employ the Beneficiary as a "business 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, California Service Center, denied the petition. The Director concluded that the Petitioner had not established it had specialty occupation work for the Beneficiary to perform.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred because she did not raise the issue of the proffered position in her request for evidence (RFE). The Petitioner maintains that it was not given an opportunity to establish that the proffered position is a specialty occupation. The Petitioner claims that the district court decision in *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), should be applied directly to this case.

Upon *de novo* 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 a “business analyst.” In a letter submitted in support of the petition, the Petitioner stated that the Beneficiary “will be responsible for using quantitative analysis and methods to conduct and coordinate product, market, operational, and related research to support strategic and business planning within the company.”

The Petitioner also provided a list of the job responsibilities for the position, including the following:

- Use quantitative analysis and methods to conduct and coordinate product, market, operational, and related research to support strategic and business planning within the company.
- Advise and recommend to management on areas of products management, products channels and placement, leads generation, customers management, customers retention and operations management planning and requirements, execution and coordination[.]
- Plan and coordinate the development of primary and secondary market research studies in support of strategic planning and specific marketing initiatives.

- Prepare reports and assessments for management review.
- Interpret, evaluate, and interrelate research data, and develop integrated business analyses and projections for incorporation into strategic decision-making.
- Use customer relationship management (CRM) to organize, automate, and synchronize business processes such as sales, marketing, customer service and support activities to achieve goals in retaining existing clients and to find, attract, and win new clients.
- Monitor all social media platforms frequently.
- Assist with content creation consistent with the Company's strategic vision.
- Design a tactical business execution plan using effective time/resource management.
- Report and actively monitor and analyze health of marketing contribution to pipeline, program ROI, client acquisition/penetration, contact acquisition/activity, including monitoring online metrics, marketing program performance and other key KPIs.
- Provide management with analysis for investments, pipeline impact and goal setting.
- Present weekly reporting dashboards to executive team.

The Petitioner stated that this position requires the employee to utilize the knowledge of quantitative analysis, quantitative methods, customer relationship management, operations management, and enterprise resource planning (ERP) in order to effectively advise and make recommendations to management. According to the Petitioner, the common industry standard for the described position is a bachelor's degree in business administration or management. The Petitioner indicated that its practice is to hire a business analyst with at least a master's degree in business administration.

### III. ANALYSIS

As to the perceived error in the Director's failure to issue an RFE specifically requesting the Petitioner to show that the proffered position is a specialty occupation, we note that there is no requirement for USCIS to issue an RFE or to issue an RFE pertinent to a ground later identified in the decision denying the visa petition. The regulation at 8 C.F.R. § 103.2(b)(8) permits the Director to deny a petition for not establishing eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the Director. Also, even if the Director had erred as a procedural matter in not issuing an RFE relative to the Petitioner's insufficient evidence establishing the proffered position as a specialty occupation, it is not clear what remedy would be appropriate beyond the appeal process itself. The administrative process provides for a motion to reopen or an appeal as a forum for the Petitioner's additional, new evidence. Here the Petitioner chose not to submit any evidence on appeal. However, we will review the record *de novo*, including the Petitioner's citation to *Residential Finance*.

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.<sup>1</sup>

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 (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup>

The labor condition application (LCA) submitted to support the visa petition states that the proffered position corresponds to the Standard Occupational Classification (SOC) code and occupation title 13-1111, "Management Analysts," from the Occupational Information Network (O\*NET). The Petitioner's generic description of the proffered position falls within the parameters of the duties of a management analyst. The subchapter of the *Handbook* entitled "How to Become a Management Analyst" states, in relevant part, "[a] bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA)." U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Management Analysts," <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4> (last visited Sep. 22, 2016). Here, the *Handbook* does not report that bachelor's degrees held by those entering the occupation are limited to and must be in any specific specialty directly related to the occupation. Accordingly, the *Handbook* does not support the assertion that at least a bachelor's degree *in a specific specialty* is normally the minimum requirement for entry into this occupational category. We also note that a preference for a particular type of degree is not synonymous with a requirement for a degree in a specific discipline.

Based on the above, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

We have reviewed *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), and the Petitioner's assertion that this decision should be applied to this matter. *Residential Finance* is

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

<sup>2</sup> 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.

often cited for the proposition that “[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.”

We agree with the aforementioned proposition that “[t]he knowledge and not the title of the degree is what is important.” In general, provided the specialties are closely related, e.g., chemistry and biochemistry, 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 philosophy and engineering, 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). Upon review of the totality of the record and as discussed above and will be discussed further below, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor’s or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks.

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance*.<sup>3</sup> We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.*

## 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

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<sup>3</sup> It is noted that the district judge’s decision in that case appears to have been based largely on the many factual errors made by the Director in the decision denying the petition. We further note that the Director’s decision was not appealed to us. Based on the district court’s findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

concentrates on 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* (or other independent, authoritative sources) reports an industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

We do not find other evidence in the record to support the Petitioner's claim that a bachelor's degree in business administration is a common industry standard for the occupation of a business or management analyst. Moreover, even if a bachelor's degree in business administration is the common industry standard, the industry standard would not establish that the occupational category of business/management analysts 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 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).

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.

Upon review of the totality of the record, the Petitioner has not explained, or offered any evidence that the duties of the position proffered here are so complex and unique that a bachelor's degree in a specific specialty is required. The Petitioner has not submitted information demonstrating how its business analyst's duties 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. For instance, 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 general duties it provided for the position. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated 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.

Therefore, the evidence of record does not establish that this position is significantly different from other management analyst positions such that it refutes the *Handbook's* information to the effect that a general bachelor's degree is acceptable for this position. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than business/management analysts or other closely related 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 does not demonstrate how its proffered position of business analyst is so complex or unique relative to other business/management analyst positions that do not require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States, it cannot be concluded that the Petitioner has 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. In that regard, we reviewed the Petitioner's assertion that it is its company practice to hire business analysts with at least a master's degree in business administration. However, other than the Petitioner's advertisement for the position, the record does not include any evidence of the Petitioner's employment practices. Additionally, we observe that while a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, 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 degree

requirement is only symbolic and the proffered position does not in fact require such a specialty degree, or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “specialty occupation”). Here, the Petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

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.

The Petitioner does not offer evidence that the proffered position requires the performance of duties so specialized and complex that knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent is required. That is, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position.<sup>4</sup>

The Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, 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.

#### IV. CONCLUSION

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 I-F- Co.*, ID# 12233(AAO Sept. 30, 2016)

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<sup>4</sup> The Petitioner has designated the proffered position as a Level II position on the submitted LCA, indicating that it is a position for an employee who has a good understanding of the occupation but who will only perform moderately complex tasks that require limited 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Therefore, it does not appear that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level III or Level IV position, requiring a significantly higher prevailing wage.