



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

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

MATTER OF O-P-O- INC.

DATE: AUG. 9, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a technology company, seeks to temporarily employ the Beneficiary as a “help desk technician” 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 of the California Service Center denied the petition, concluding that the evidence of record does not establish that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred in the decision. 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:

- (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). We construe the term “degree” 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 “help desk technician.” The Petitioner provided a job description for the proffered position, along with the daily tasks involved for each duty and the approximate percentage of time the Beneficiary will spend on each duty. According to the Petitioner, the proffered position requires a bachelor’s degree in computer science, technology, or a related field.

## III. ANALYSIS

For the reasons set out below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>1</sup>

### A. Labor Condition Application

First, we turn to the labor condition application (LCA)<sup>2</sup> submitted in support of the H-1B petition, in which the Petitioner designated the proffered position under the occupational category “Computer

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<sup>1</sup> 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> A petitioner submits the LCA to DOL to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

User Support Specialists” corresponding to the Standard Occupational Classification (SOC) code 15-1151. On appeal, the Petitioner states that “[t]he detailed work activities for the Computer Network Support Specialist. . . fits the duties enumerated for the proffered position.” The Petitioner further provides a copy of the Occupational Information Network (O\*NET) summary report for “15-1152.00 - Computer Network Support Specialists.”

While these occupational categories may have some general duties in common, they are distinct and separate occupational categories. When the duties of a proffered position involve more than one occupational category, the U.S. Department of Labor (DOL) provides guidance for selecting the most relevant O\*NET code classification. The “Prevailing Wage Determination Policy Guidance” by DOL states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer’s job offer and determine the appropriate occupational classification. The O\*NET description that corresponds to the employer’s job offer shall be used to identify the appropriate occupational classification . . . . If the employer’s job opportunity has worker requirements described in a combination of O\*NET occupations, the [determiner] should default directly to the relevant O\*NET-SOC occupational code for the highest paying occupation. For example, if the employer’s job offer is for an engineer-pilot, the [determiner] shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

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).

Thus, if the Petitioner believed its position was best described as a combination of these occupations, then according to DOL guidance, the Petitioner should have chosen the relevant occupational code for the highest paying occupation. The prevailing wage for “Computer User Support Specialists” – the occupation the Petitioner selected – is lower than the prevailing wage for “Computer Network Support Specialists.”

<b>Occupational Category</b>	<b>Prevailing Wage:</b> California
Computer User Support Specialists	\$46,782 <sup>3</sup>
Computer Network Support Specialists	\$51,584

<sup>3</sup> The Petitioner obtained this wage from Radford Global Technology Survey.

Under the H-1B program, a petitioner must offer the beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A); *Simeio Solutions, LLC*, 26 I&N Dec. at 545-546.

As such, the Petitioner has not established that: (1) it submitted a certified LCA that properly corresponds to the claimed occupation and duties of the proffered position; and (2) it would pay the Beneficiary an adequate salary for his work, as required, if the petition were granted. These issues preclude the approval of the petition.

Nevertheless, we will review the evidence of record to determine whether the proffered position qualifies as a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>4</sup>

#### B. First Criterion

We turn now 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 DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>5</sup>

As previously noted, the Petitioner designated the proffered position under the occupational category "Computer User Support Specialists" on the LCA. The subchapter of the *Handbook* titled "How to Become a Computer Support Specialist" states, in relevant part, that "[a] bachelor's degree is required for some applicants applying to computer support specialist positions, but an associate's degree or postsecondary classes may be enough for others."<sup>6</sup> Thus, the *Handbook* does not support the Petitioner's assertion that a bachelor's degree is required for entry into this occupation.

In response to the RFE, the Petitioner submitted a letter from [REDACTED] an associate professor of computer systems technology at [REDACTED] for our

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<sup>4</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>5</sup> We do not 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 we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. Nevertheless, to satisfy the first criterion, 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.

<sup>6</sup> Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Computer Support Specialists, <https://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm> (last visited Aug. 8, 2018).

consideration under this criterion. In his letter, [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) lists the duties proposed for the Beneficiary; and (3) states that these duties require at least a bachelor's degree in computer science, information technology, or a related field. We carefully evaluated [REDACTED] assertions in support of the instant petition but, for the following reasons, determined his letter is not persuasive.

First, we note that [REDACTED] does not discuss the duties of the proffered position in any substantive detail. Rather, he paraphrased the duties and description of tasks listed in the Petitioner's RFE response. He does not discuss them in the specific context of the Petitioner's business. There is no indication that he possesses any knowledge of the Petitioner's proffered position beyond this job description, e.g., visited the Petitioner's business, observed the Petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that these workers apply on the job prior to documenting his opinion regarding the proffered position. His level of familiarity with the actual job duties as they would be performed in the context of the Petitioner's business has therefore not been substantiated.

Moreover, the record does not include evidence that [REDACTED] has published, conducted research, run surveys, or engaged in any enterprise, pursuit, or employment - academic or otherwise - regarding the minimum education requirements for the performance of the duties of the proffered position. While he may have anecdotal information regarding recruitment by employers for students who study computer systems technology, the record does not include any relevant research, studies, surveys, or other authoritative publications as part of his review and/or as a foundation for his opinion.

For the reasons discussed, we conclude that the opinion letter from [REDACTED] is insufficient to satisfy the first criterion. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is "not in accord with other information or is in any way questionable.")<sup>7</sup>

On appeal, the Petitioner cites to *Residential Finance Corp. v. U.S. Citizenship and Immigration Services (USCIS)*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), 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 generally acknowledge that "[t]he knowledge and not the title of the degree is what is important." However, 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

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<sup>7</sup> We hereby incorporate our discussion of [REDACTED] letter into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

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).<sup>8</sup> For the aforementioned reasons, however, 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>9</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.* It is also important to note that in a subsequent case reviewed in the same jurisdiction, the court agreed with our analysis of *Residential Finance*. *See Health Carousel, LLC v. USCIS*, No. 1:13-CV-23, 2014 WL 29591 (S.D. Ohio 2014).

In the instant matter, the Petitioner has not provided sufficient documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

### C. 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 looks to the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

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<sup>8</sup> The court in *Residential Finance* did not eliminate the statutory “bachelor’s or higher degree in the specific specialty” language imposed by Congress. Rather, it found that the petitioner in that case had *satisfied* the requirement.

<sup>9</sup> The district judge’s decision 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.

## 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.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: 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) (considering these “factors” to inform the commonality of a degree requirement)).

In support of this criterion, the Petitioner submits copies of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner’s reliance on the job announcements is misplaced. First, the Petitioner has not demonstrated that these organizations are similar. When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and conducts business in the same industry without providing a legitimate basis for such an assertion. For instance, the Petitioner did not submit information regarding the employers’ revenue or staffing. The Petitioner did not sufficiently supplement the record of proceedings to establish that these advertising organizations are similar.

Moreover, many of the advertisements do not appear to involve parallel positions. For example, some of the advertisements appear to advertise more senior, experienced employment than the proffered position.<sup>10</sup> Further, some of the postings do not include sufficient information about the tasks and responsibilities for the advertised positions. Thus, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to those of the proffered position.

In addition, some of the postings do not indicate that at least a bachelor’s degree in a directly related specific specialty (or its equivalent) is required.<sup>11</sup> For instance, the posting placed by [REDACTED] states that a “Bachelors degree in an IT related field” is preferred.

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<sup>10</sup> For instance, the posting placed by [REDACTED] states a requirement for a bachelor’s degree and three to five years of industry experience. In addition, the advertisement placed by [REDACTED] states a requirement for a bachelor’s degree in information systems, computer science, cybersecurity, computer engineering, or a related discipline and a minimum of 10 years of experience as an information technology specialist.

<sup>11</sup> As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor’s or higher degree, but a bachelor’s degree in a specific specialty that is directly related to the duties of the position. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

Overall, the job postings suggest, at best, that although a bachelor's degree is sometimes required for these positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.<sup>12</sup>

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.<sup>13</sup> That is, not every deficit of every job posting has been addressed.

Without more, the Petitioner has not provided sufficient evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. 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.

Though the Petitioner does not directly contest that portion of the Director's decision denying the petition on this ground, we conclude nonetheless that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position.

The Petitioner submitted a list of job duties and the percentage of time the Beneficiary would devote to certain tasks. On appeal, the Petitioner also provides the software technologies the Beneficiary will use in the proffered position. However, the record does not demonstrate that the necessary knowledge for the proffered position is attained through an established curriculum of particular courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent. 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. In fact, the duties as described by the Petitioner, which includes tasks such as “[p]rovide

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<sup>12</sup> It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that “[r]andom selection is the key to [the] process [of probability sampling]” and that “random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error”).

<sup>13</sup> The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.



systems administration support, backup and disaster recovery monitoring, including user account setup, antivirus installation and security maintenance” and “[m]anage voice over internet protocol for all corporate offices” do not appear to be so complex or unique such that a degree in computer science, or technology, would be necessary to perform them.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references his 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).

**D. 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.

Upon review of the record, we find that the Petitioner did not submit information regarding employees who currently or previously held the position. The record does not establish that the Petitioner normally requires at least a bachelor’s degree in a specific specialty, or its equivalent, directly related to the duties of the position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

**E. 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.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. While the position may require that the Beneficiary possess some skills and technical knowledge in order to perform these duties, the Petitioner has not sufficiently explained how these tasks require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. The record does not include sufficient probative evidence that the duties require more than technical proficiency in the field. Thus, the Petitioner has not demonstrated 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).

*Matter of O-P-O- Inc.*

#### 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of O-P-O- Inc.*, ID# 1476697 (AAO Aug. 9, 2018)