



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

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

MATTER OF E-(USA) LLC

DATE: JULY 12, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an importer and wholesaler for CCTV surveillance products, seeks to temporarily employ the Beneficiary as an “operations research 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 of the California Service Center denied the petition, concluding that the proffered position does not qualify as a specialty occupation.

On appeal, the Petitioner submits new evidence, and asserts that the Director erred in her 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. ANALYSIS

In the H-1B petition and supporting documentation, the Petitioner described itself as “a leading provider in design, development, manufacture and distribution of surveillance products.” On appeal, the Petitioner emphasizes the uniqueness, complexity, and size of its operations. It distinguishes itself from competitors by stating that, unlike other companies which “merely work as either designers, manufacturers, or wholesalers,” the Petitioner “oversees all stages of product development.” Based on the claimed nature and scope of its business model, the Petitioner asserts that the proffered position and its associated job duties are so unique, complex, and specialized such that they require at least a bachelor’s degree in operations, economics, management, or a closely related field.

However, upon review of the entire record, we determine that the Petitioner has not sufficiently demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not corroborate the Petitioner’s descriptions of its operations and the proffered position’s role within its operations. Accordingly, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

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.

Throughout the record, the Petitioner overstates the scope of its operations. For instance, the Petitioner characterizes itself as a designer, developer, and manufacturer of surveillance products, stating that “it is responsible for directly overseeing all the stages of product development, starting with product design.” But according to the Petitioner’s organizational chart and accompanying job duties chart, its “product R&D [research and development] department” consists of one employee with the title of product manager. This product manager’s duties include “test[ing] new released products and send feedback to manufacturer to refine them.” These duties do not indicate that the Petitioner actually designs and manufactures its own products; rather, they indicate that the Petitioner sources and sells products manufactured by other companies. This is consistent with the Petitioner’s statements on appeal that it “oversees the manufacturing process through partnering with manufacturers overseas.” There is no evidence that the Petitioner owns or controls these overseas manufacturing “partners”; thus, it is an overstatement to say that the Petitioner has a manufacturing and product development operation.

The Petitioner also claims that its retail operation is “more complex tha[n] others in the industry because of its multiple sales channels,” i.e., its retail stores and website. The Petitioner further claims that its “online sales are particularly complex” because it involves choosing appropriate shipping services and minimizing the risks of lost or damaged packages. However, these generic statements do not sufficiently distinguish the Petitioner from other online retail companies that sell products manufactured overseas. Similarly, the Petitioner’s statements regarding its “sophisticated online sales channel, where customers can create accounts, use coupons and gift vouchers, and view sales history,” are insufficient to explain why the Petitioner’s retail operation is more complex than other companies which offer online sales.

The Petitioner additionally highlights “the large size of many of the Petitioner’s warehouses showing its large inventory and complex logistical operations involving international trade and covering distributions throughout the entire U.S.” However, notably absent from the Petitioner’s organizational and job duties charts is any support personnel performing lower-level duties related to warehousing, inventory, and logistics. The only personnel with any warehouse, inventory, and logistics related duties are the three operations managers² which, together with the Beneficiary, make up the Petitioner’s “operation and purchasing department.” More specifically, the operations managers are responsible for the following duty: “manage inventory, logistics, coordinate all orders shipped out from local branch, report operation problems to supervisors.” This information calls into question who performs the lower-level inventory, logistics, warehousing, and related tasks necessary to execute the Petitioner’s daily operations. It is not apparent who the operations managers are managing, as the organizational chart depicts them as having no subordinates.

Likewise, the organizational and job duties charts depict no purchasing personnel, despite the name of the Beneficiary’s department as “operation and purchasing department.”³ It is therefore unclear

² One of the operations managers is also identified as a sales manager. Each operation manager oversees branch offices in different states.

³ The Petitioner has a separate sales department, which includes several sales managers and sales engineers. None of

who is performing the lower-level purchasing duties, which also appear necessary to execute the Petitioner's daily operations. Overall, the lack of documented personnel to perform the Petitioner's routine inventory, logistics, warehousing, purchasing, and other necessary duties leads us to question the credibility of the Petitioner's descriptions of its operations and staffing.

The Petitioner's claims about the uniqueness, complexity, and scope of its operations (e.g., that it "oversees all stages of product development") are uncorroborated. Consequently, its claims about the job duties' uniqueness, complexity, specialization, and other material aspects of the proffered position are also uncorroborated. Overall, the record does not credibly demonstrate what exactly the Beneficiary will be doing in the proposed capacity as an operation research analyst.

As the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, it has not established that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). It is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into 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.

III. CONCLUSION

As the Petitioner has not established eligibility under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies for classification as a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of E-(USA) LLC*, ID# 1367213 (AAO July 12, 2018)

these sales personnel have direct duties in purchasing.