



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

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

MATTER OF B-O-T-

DATE: OCT. 18, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a sales and distribution company, seeks to temporarily employ the Beneficiary as an “accountant” 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 Vermont Service Center denied the petition, concluding that the record did not establish that: (1) the proffered position qualifies as a specialty occupation; (2) there is sufficient specialty occupation work available for the entire requested H-1B validity period; and (3) the Beneficiary qualifies for a specialty occupation.¹

On appeal, the Petitioner submits additional evidence and asserts that the Director erred in denying the petition. Upon *de novo* review, we will dismiss the appeal.

I. SPECIALTY OCCUPATION

We will first address whether the record establishes that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

¹ Upon review of the record of proceedings, we find that the Petitioner has established that it will have sufficient work available for the entire requested H-1B validity period for the Beneficiary. However, the petition cannot be approved as the record before us does not establish that the proffered position requires a baccalaureate or higher degree in a specific specialty, or its equivalent.

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.

A. 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 have consistently interpreted 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”).

B. The Proffered Position

The Petitioner seeks to employ the Beneficiary as an accountant. In its letter of support, the Petitioner stated the Beneficiary would be responsible for cash flow, financial reports, internal financial controls, budgets, payroll, as well as accounts receivable and payable. In response to the Director’s request for evidence (RFE), the Petitioner provided additional information for the proffered

position.³ The Petitioner also stated that it “will not hire anyone for this job that does not have at least US Bachelor’s Degree in accounting or a related field.”

C. Analysis

For the reasons set out below, we have determined that the proffered position does not qualify as a specialty occupation.⁴ Specifically, the record: (1) does not describe the position’s duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.

1. 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. 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.⁵

On the labor condition application (LCA),⁶ the Petitioner designated the proffered position under the occupational category “Accountants and Auditors” corresponding to the Standard Occupational Classification code 13-2011.

The *Handbook* subchapter entitled “How to Become an Accountant or Auditor” states, in pertinent part, that most accountants and auditors need at least a bachelor’s degree in accounting or a related field.⁷ According to the *Handbook*, however, those with associate’s degrees, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.⁸ Therefore, according to the *Handbook*, individuals who have less than a bachelor’s degree in a specific specialty, or its equivalent, can obtain junior accounting positions and

³ For the sake of brevity, we will not quote the most recent version; however, we have closely reviewed and considered them.

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

⁵ 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. 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.

⁶ 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).

⁷ Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Accountants and Auditors <https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-4> (last visited Oct. 17, 2018).

⁸ *Id.*

then advance to accountant positions. The *Handbook* does not state that this education and experience must be equivalent to at least a bachelor's degree in a specific specialty.

In the instant matter, the Petitioner has not provided sufficient documentation from a probative, authoritative 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).

2. 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.

a. 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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a 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.

In support of this criterion, the Petitioner submitted 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, we note that some of the job postings do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is a sales and distribution company with 20 employees, whereas the advertising organizations include:

- The City of Saint Paul, Minnesota;

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- Santa Clara Valley Open Space Authority – an organization that conserves the natural environment;
- Atlanta Braves – a major league baseball team;
- Millard Roofing – a commercial and residential restoration company; and
- Crossroads Hospice – a health care organization.

Furthermore, some of the postings appear to be for staffing agencies and provide little or no information regarding the hiring employers. The Petitioner did not supplement the record of proceedings to establish that these advertising 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.

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.⁹ 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.¹⁰ For instance, some of the advertisements state that a general degree (e.g., bachelor's degree in business) is acceptable for the position.¹¹ Furthermore, the advertisement by Ashley HomeStore states "Bachelors/Associate Degree in Accounting is preferred." 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.¹²

⁹ For instance, the posting placed by The Rowland Group states a requirement for a bachelor's degree in finance or accounting and 7-10 years of experience in manufacturing. In addition, the advertisement placed by the Santa Clara Valley Open Space Authority states a requirement for a bachelor's degree in accounting, business administration or a related field and three years of professional accounting experience.

¹⁰ 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).

¹¹ Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam*, 484 F.3d at 147.

¹² 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

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.¹³ 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).

b. 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 submitted a letter from [REDACTED] a professor of accounting at [REDACTED] [REDACTED] for our 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 accounting, 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 restates the same duties 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 -

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”).

¹³ 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.

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 accounting, 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.

_____ cites the *Handbook*; however, as previously discussed, the *Handbook* does not state that a bachelor's degree in a specific specialty, or its equivalent, is required for an accounting position. _____ also references the following websites: www.accountingcoach.com/careers/ and <http://career-advice.monster.com/job-search/company-industry-research/accounting-careers-faq/article.aspx>. Notably, he did not provide printouts from these websites. We queried the websites and found that the monster.com website does not state that a bachelor's degree is required for accounting positions. The accountingcoach.com website states that "[a]ccountants are expected to have a bachelor's degree in accounting from a four-year college or university." We note that the website does not provide any information regarding the source of the information on this particular issue. That is, there is no information to support the conclusions, such as references/citations to statistical surveys, authoritative industry publications; or professional studies. Thus, the website cannot be found to be probative evidence to establish the proffered position as qualifying as a specialty occupation.

In addition, _____ references the glassdoor.com website and lists three job announcements. However, he also does not provide printouts of these job vacancy announcements.¹⁴ The record does not contain the job announcements (including, for instance the job descriptions), thus, aside from the job titles, there is no evidence that the positions are for parallel positions and a substantive determination cannot legitimately be made. Notably, _____ indicates that some of the advertisements appear to advertise more senior, experienced employment than the proffered position. For instance, one of the advertisements requires a bachelor's degree in accounting and three years of experience. Thus, the advertisements do not appear to involve parallel positions.

For the reasons discussed, we conclude that the opinion letter from _____ 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.")¹⁵

The Petitioner also described the proffered position and its business operations. When discussing H-1B employment, the Petitioner's description must be comprehensive enough to properly ascertain the minimum educational requirements necessary to perform those duties. Notably, the Petitioner did not provide sufficient information with regard to the order of importance and/or frequency of

¹⁴ If _____ wished for us to review the job announcements, he should have provided printouts from the websites. We are not required to attempt to locate the various advertisements by searching the Internet for these links. Notably, the content of the link may have changed since _____ accessed the site.

¹⁵ We hereby incorporate our discussion of _____ letter into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

occurrence (e.g., regularly, periodically, or at irregular intervals) with which the Beneficiary will perform the functions and tasks. Thus, the record does not specify which tasks are major functions of the proffered 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.

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 credentials 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).

3. 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. Although the Petitioner asserts that it "has not employed anyone as an accountant with less than a Bachelor's Degree and confirms he will not," it does not provide any information on its past hiring requirements or the education and experience levels of previous employees in the accountant position. As the record does not include evidence in support of this criterion, it will not be discussed further. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

4. 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.

Though the Petitioner does not contest that portion of the Director's decision denying the petition on this ground, we conclude nonetheless that 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

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position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

II. BENEFICIARY QUALIFICATIONS

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, we need not and will not address the Beneficiary's qualifications further.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established eligibility for the benefit sought.

ORDER: The appeal is dismissed.

Cite as *Matter of B-O-T-*, ID# 1512058 (AAO Oct. 18, 2018)