



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

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

MATTER OF N-V-D-E- INC.

DATE: OCT. 24, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a submarine sandwich franchise, seeks to temporarily employ the Beneficiary as a “supply chain 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 Vermont Service Center denied the petition, concluding that the proffered position does not qualify as a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts that the proffered position qualifies as a specialty occupation.

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”).

## II. PROFFERED POSITION

The Petitioner describes itself as a submarine sandwich franchise which owns and operates 10 stores. It seeks to employ the Beneficiary as a full-time supply chain analyst at its headquarters location. In its initial support letter, the Petitioner provided the following job duties for the position<sup>1</sup>:

- ✓ Analyze supply chain data including availability, maintainability, reliability, sourcing and distribution to ensure vendors are in 100% compliance with the Company’s rigorous quality assurance standards;
- ✓ Develop and maintain models regarding cost estimating and demand forecasting, reporting findings to management[;]
- ✓ Maintain and analyze logistics data to identify areas for improvement;
- ✓ Review procedures including inventory management and distribution to ensure maximum efficiency and minimize cost;
- ✓ Recommend improvements to existing processes;
- ✓ Manage and control inventory levels;
- ✓ Implement space panning reports, set guides and core standards;

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<sup>1</sup> The Petitioner submitted additional job descriptions which, for the sake of brevity, we will not replicate here. Nevertheless, we have carefully considered those additional descriptions. We have also carefully considered additional documentation the Petitioner submitted to support the H-1B petition, including evidence regarding its business operations, although we may not discuss every document submitted.

- ✓ Perform analysis of vendors and suppliers to ensure maximum quality and cost efficiency;
- ✓ Using data on daily and weekly promotions, along with data regarding traffic at various stores, ensure distribution of quality perishables are timely delivered, and ensure inventory turns are fresh and efficient while reducing waste;
- ✓ Develop and manage systems to ensure pricing structures adequately reflect logistics costs;
- ✓ Develop and manage systems to ensure accuracy of vendor payments;
- ✓ Develop and maintain systems to better track inventory using logistics-related databases;
- ✓ Monitor industry standards, trends, or practices to identify developments in logistics and inventory control planning and execution; and,
- ✓ Understand and meet customers' needs while minimizing cost and time required to ensure excellent customer service and safety.

According to the Petitioner, the position requires the minimum of a U.S. bachelor's degree or its foreign equivalent in supply chain management, business administration with a concentration in supply chain management or logistics, or a closely related field.

### 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 under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>2</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 normally 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>3</sup>

On the labor condition application (LCA)<sup>4</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Logisticians" corresponding to

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<sup>2</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>3</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>4</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

the Standard Occupational Classification code 13-1081. Thus, we reviewed the *Handbook's* subchapter entitled "How to Become a Logistician," which states, in pertinent part: "A bachelor's degree is typically required for most positions, although an associate's degree may be sufficient for some logistician jobs. In some cases, related work experience may substitute for education."<sup>5</sup> Also according to the *Handbook*, while many logisticians have a bachelor's degree in business, systems engineering, or supply chain management, logisticians may qualify for some positions with an associate's degree.<sup>6</sup>

The *Handbook* therefore does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions. It specifically states that an associate's degree is acceptable for some positions, and that work experience can sometimes substitute for education. Further, the *Handbook* indicates that, when a bachelor's degree is preferred or required, a degree in business (among other fields) would suffice. Although a general-purpose bachelor's degree in business 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.*, 484 F.3d at 147. Accordingly, the *Handbook* does not support the particular position proffered here as being a specialty occupation by virtue of its occupational category.

On appeal, the Petitioner cites to *Pippins v. KPMG LLP*, 759 F.3d 235 (2d. Cir. 2014) to support its assertion that the *Handbook's* language regarding associate's degrees for some positions "does not negate the general requirement of a bachelor's degree for the classification." We are not persuaded. As the Petitioner acknowledges, this case is not binding; moreover, this case does not involve the H-1B nonimmigrant classification. In any event, we note the court's statement in *Pippins* that "[t]he word 'customarily' implies that in the vast majority of cases the specific academic training is a prerequisite for entrance into the profession." The Petitioner has not documented through an authoritative, reliable source that the "vast majority" of logistician positions require "specific academic training." Rather, as the *Handbook* demonstrates, logisticians can enter the occupation through a variety of means including an associate's degree, an undefined amount of work experience, and a general business degree.

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

## 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

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employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

<sup>5</sup> Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Logisticians, <https://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4> (last visited Oct. 11, 2018).

<sup>6</sup> *Id.*

individual with a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates 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.

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 establish 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)).

Here, however, the *Handbook* does not indicate that a bachelor’s degree in a specific specialty is a common requirement within the industry for parallel positions among similar organizations. Also, the Petitioner did not submit evidence from an industry professional association or from firms or individuals in the industry indicating such a degree is a minimum requirement for entry into the position.

Under this prong, the Petitioner relies on several job advertisements placed by other companies, while recognizing that these companies are not in the same industry. More specifically, the Petitioner states on appeal that the other companies are “in different industries than Petitioner’s industry” because “it was not realistic for the Petitioner to provide evidence of other ‘comparable’ restaurant chains.” Therefore, the Petitioner has not met a threshold element of this prong, i.e., that the degree requirement be “common to the industry.” Because of this fundamental deficiency, we need not individually address each of the submitted advertisements.

Even when we focus on the four advertisements specifically mentioned in the appeal brief (from a manufacturer of firelogs and related supplies, two oil and gas production companies, and a major pharmaceutical manufacturer), we would find them insufficient. First, and as already discussed above, they are not from companies in the same industry. Second, they are not from similar organizations with supply chain operations comparable in scope and complexity to the Petitioner’s more limited, 10-restaurant operations. Third, they do not appear to be for parallel positions: two of them are “senior” supply chain positions, while the other two require several years of experience (the proffered position requires none). Thus, we are not persuaded by the advertisements.

For all of the above reasons, 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.

Here, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the duties of the position because it has not adequately demonstrated what the Beneficiary would do within the context of the Petitioner's overall operations. We acknowledge the Petitioner's submission of relatively detailed job descriptions; however, we have reason to question whether those descriptions are accurate and whether the Petitioner would be able to support the Beneficiary in that claimed capacity.

For instance, many of the Beneficiary's activities involve managing stock and inventory levels. But the Petitioner currently employs another supply chain analyst as well as a manager of administration, a general operations manager, a chief financial officer, and a president. It also employs store managers and shift supervisors for each of its 10 locations. The Petitioner did not explain those other positions' job duties and differentiate them from the duties the Beneficiary would perform. Without such information, we cannot understand how the Beneficiary's duties would differ from those already performed by other positions, and why his particular duties would require at least a bachelor's degree in a specific specialty. Further, the Petitioner did not explain why it needs a second supply chain analyst, which raises additional questions as to whether the Petitioner would support the Beneficiary's employment in the claimed capacity on a full-time basis.

The Petitioner has not explained who would relieve the Beneficiary from performing lower-level inventory duties related to stocking and inventory. For example, according to the *Handbook*, logisticians *oversee* activities that include purchasing, transportation, inventory, and warehousing. Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Logisticians, <https://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-2> (last visited Oct. 11, 2018). The record here does not explain who the Beneficiary would oversee, if anyone, to perform the daily purchasing, transportation, inventory, or warehousing functions.

Additionally, the Petitioner is a franchisee of "the world's largest submarine sandwich chain." The Petitioner has not explained its obligations, limitations, or benefits as a franchisee. For example, the record does not demonstrate whether the Petitioner is contractually obligated to purchase from certain suppliers or vendors, which would reduce the Petitioner's need for the Beneficiary to perform such duties as sourcing vendors and suppliers. The record also does not demonstrate what support services the Petitioner receives from the franchisor, including whether those services include supply chain management assistance. This aspect, combined with the Petitioner's employment of a second supply chain analyst and numerous supervisory, managerial, and executive personnel, adds to our concerns about the Petitioner's need for and ability to support the Beneficiary's employment in the claimed capacity.

On appeal the Petitioner highlights its “complex supply chain” and “size and supply-chain intensive nature of the Petitioner’s business” compared to other businesses in the restaurant industry. These assertions about its complex supply chain needs are not supported by the Petitioner’s designation of the proffered position at the Level I wage, which generally indicates that this position is an entry-level position compared to other such positions within the occupation. That is, the Level I wage rate indicates that this position would not have requirements for experience, education, training, and special skills exceeding those generally required for the occupation.<sup>7</sup> Therefore, without additional information and evidence, the record as presently constituted does not support the Petitioner’s characterizations about its complex operations.

As the record does not demonstrate what exactly the Beneficiary would do and the level of complexity, uniqueness, or specialization of those tasks, 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.

Initially the Petitioner stated that “this is a new position at our Company.” On appeal the Petitioner states that it currently employs another supply chain analyst. The Petitioner has not explained this apparent inconsistency.

Further, the Petitioner has not provided objective evidence of the other supply chain analyst’s employment status and actual job duties – it provided only this individual’s diploma and transcript. Nor has the Petitioner submitted its job posting or other similar evidence to demonstrate its historical recruitment and hiring standards for this position.

In any event, the record must establish that a petitioner’s stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the

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<sup>7</sup> A wage determination starts with an entry-level wage (Level I) and progresses to a higher wage level (up to Level IV) after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. 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](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

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.

position. We are not persuaded by the Petitioner's suggestion this criterion "makes no mention of whether the employer's normal requirement for a degree also contains an analysis of whether the position requires the theoretical and practical application of a body of specialized knowledge." In general, the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Fed. Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

Thus, even if the Petitioner had provided evidence regarding its past employment practices (which it has not), it has not demonstrated that the actual performance requirements of the position necessitate the claimed degree requirement. 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.

For the same reasons we discussed under the second prong of criterion (2), we conclude that the Petitioner has not demonstrated that its proffered position is one with duties sufficiently specialized and complex to require a baccalaureate or higher degree in a specific specialty, or its equivalent. We reiterate our earlier discussion here. The Petitioner has not satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

#### IV. CONCLUSION

Because the Petitioner has not satisfied any 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.



*Matter of N-V-D-E- Inc.*

**ORDER:** The appeal is dismissed.

Cite as *Matter of N-V-D-E- Inc.*, ID# 1527885 (AAO Oct. 24, 2018)