



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

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

MATTER OF G- INC.

DATE: JULY 25, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a homework help application company, seeks to temporarily employ the Beneficiary as a “business operation lead” 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 California Service Center Director denied the petition, concluding that the Petitioner had not established that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner asserts that the Director erred and the evidence supports an approval of the petition.

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

In response to a request for evidence (RFE) and on appeal, the Petitioner lists the duties of the proffered position as follows<sup>1</sup>:

- Analyzing large unstructured datasets to identify business insights, as well as providing and implementing recommendations on priorities for the business (25%)
  - Triangulate and analyze unstructured data from different sources such as raw data from our database and text interaction data between the user and Expert.
  - Evaluate, monitor and improve metrics such as session quality by analyzing interactions between the user and Expert to identify Expert knowledge/skill gaps in the fields of accounting, corporate finance, statistics and marketing.
  - Develop demand forecasts to help inform supply strategy by using analytical and statistical techniques such as trend extrapolation, weighted and rolling averages, linear regression and correlation analysis, by taking into account factors such as historical demand levels, time of day, seasonality, advertising spend, consumer demographic and profile, etc.
  - Develop user segments and identify those that are high performing through their impact on business objectives such as Gross Margin, Customer Life Value etc. by leveraging the principles of analytics and marketing and developing insight into the consumer through clustering analyses by using the data in Excel, Google Sheets and Python, based on attributes such as frequency of ask, growth in rate of ask, etc.

---

<sup>1</sup> In support of the petition, the Petitioner had submitted a list of same duties without the percentage breakdown and additional details under each bullet.

- Make recommendations on go/no-go decisions for launching new products. Ascertain revenue potential of a product by identifying value proposition and competitive advantage through strategic management principles.
- Develop a business plan and quantify Gross Margin (GM) by factoring in critical metrics such as potential Monthly Active Users (MAUs), New MAU to payer conversion, frequency of paid sessions, number of retained payers, enterprise channel (Business to Business) penetration, etc. Ascertain long term financial potential in terms of Net Present Value (NPV).
- Defining, monitoring, and analyzing metrics that inform success of the business (20%)
  - Define user experience metrics and best practices to enhance customer satisfaction and gain competitive advantage. Leverage benchmarks and case studies of winning strategies used by technology focused, comparable, two-sided, on demand marketplaces to build sustainable competitive advantage and make iterations to business model design.
  - Measure and improve the Net Promoter Service (NPS), by gauging the overall satisfaction of customers with our product and service.
  - Improve critical metrics such as the Lifetime Value (LTV) of Experts by improving correlated metrics such as retention.
  - Design surveys for insight into the demographic and geographic market, so as to grow and retain the Expert base.
  - Analyze retention trends by segment and identify motivations for Experts to stay or leave the platform.
  - Identify key drivers of customer satisfaction such as connection time to an Expert based on customer research, best practices in user experience as well as benchmarks and winning strategies used by technology focused, comparable, two-sided, on demand marketplaces to build a sustainable competitive advantage.
  - Define these key drivers of customer satisfaction as metrics and use statistical and analytical techniques to improve these metrics by drawing correlations between these and Expert behaviors on the platform. An example of this would be improving the connection time to an Expert by analyzing the relationship between connection time and indicators of Expert engagement and retention.
  - Develop statistical and analytical models such as a logistic regression model to quantify the relationship between user ratings and product and service attributes, to generate insights on improving the metric.
- Forecasting and planning for the success of [Petitioner's] supply or Expert facing side of the business, including acquisition, engagement and retention (15%)
  - Develop predictive models to forecast capacity needed to cater to demand at desired service levels. These models also ascertain scalability, or the time taken to ramp into a desired level of quality and service at different levels of demand. Building these models entails analyzing various marketing conversion funnels, such as the Expert acquisition funnel, the onboarding and training funnel, and the retention

- funnel from the strategic lens of Conversion Rate (CVR), quality and speed to market.
- Develop strategies to optimize the digital marketing funnel and identify the dimensions of strategic importance across Conversion Rate (CVR), quality and speed to market.
  - Develop strategies to maximize exposure at the top of the funnel, conversion through the middle and retention at the bottom of the funnel. The duties entail designing, analyzing and iterating strategies at different points of the funnel.
  - Brainstorming, testing and iterating creative ideas to unlock new growth opportunities – product and business model redesign, pricing strategies, online marketing activities, re-engagement strategies and merchandising experiments (10%)
    - Conceptualize and run pricing experiments and A/B tests, a common technique in digital marketing, to grow the marketplace and ascertain price elasticity, a concept in economics. This entails developing and testing innovative pricing strategies such as subscriptions, bundles, memberships, pay as you go and various types of promotions. This duty also entails developing strategies around tiered pricing plans with different feature sets, based on research of the customer’s needs and projections of Gross Margin (GM), Conversion Rate (CVR) and Customer Lifetime value (CLTV).
  - Prioritizing projects and setting timelines to reach and achieve business goals in a time bound manner (10%)
    - Structure every analysis and sub analysis into multiple executable steps.
    - Review and manage project plans – ensure that team members capture all work streams, tasks and sub tasks. Assign timelines by estimating the effort associated with each analysis.
    - Review the work output and data analysis of team members. Ensure that best practices in quantitative techniques, solution structuring, communication and presentation are followed.
  - Helping to train and serving as a primary point of contact for a community of high quality online Experts (5%)
    - Develop effective strategies to communicate with, market to, and train our supply of Experts.
    - Develop a positioning or value proposition for target segments and develop an action plan, such as testing value propositions through different creative campaigns and determining the Return on Investment (ROI) and reach.
  - Participating in designing and streamlining new and existing processes to ensure supply scalability, efficiency, and user delight (5%)
    - Develop processes to manage demand and supply in real time by ascertaining the efficient frontier of price and quality of service, using the principles of pricing, supply and demand elasticity, game theory, economics and incentivization.
    - Identify the “critical fractile” or the optimal level of supply and Expert capacity, and build processes to operate the business at that level of supply.
    - Address supply availability gaps by ideating on and designing new models to improve service levels, such as staffing highly skilled Experts by the hour, yielding a significantly higher effective capacity. This entails mining the right Experts for

- maximum impact using analytical techniques, developing hybrid fixed and variable pay incentive models, and assessing their impact on gross margin as well as the diminishing marginal utilities of the program.
- Identifying and communicating product/process to product and engineering teams to execute and implement projects (10%)
    - Identify user experience and product improvement opportunities, and prioritize them by quantifying their impact on critical business objectives such as retention and engagement, and develop metrics to assess effectiveness of the initiatives. For instance, identify and communicate that a feature or our user – Expert matching *ExpertRank* AI technology results in poor engagement and retention for new Experts.
    - Develop presentations to communicate the insights learnt through various data analyses to cross-functional teams such as Product and Engineering.

The Petitioner initially stated that the position requires, at a minimum, a bachelor’s degree in business or a related field. In response to the RFE, the Petitioner listed the minimum requirement as a bachelor’s degree in business administration or a closely related field.

### III. ANALYSIS

For the reasons set out below, the proffered position does not qualify as a specialty occupation. Specifically, the record does not sufficiently establish the substantive nature of the proffered position, which precludes a finding that the proffered position satisfies any criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>2</sup>

For example, the record does not establish that the occupational category designated on the labor condition application (LCA) is consistent with the duties of the proffered position.<sup>3</sup> On the LCA submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Market Research Analysts and Marketing Specialists” corresponding to the Standard Occupational Classification (SOC) code 13-1161, at a Level III wage.

However, the Petitioner’s description of duties does not sufficiently establish that the proffered position corresponds to “Market Research Analysts and Marketing Specialists.” Specifically, the Petitioner states the Beneficiary will “[d]evelop statistical and analytical models such as a logistic regression model,” “[d]evelop predictive models to forecast capacity needed to cater to demand at desired service levels,” and “[a]ddress supply availability gaps by ideating on and designing new models to improve service levels.” The Petitioner further states she will be “developing hybrid fixed and variable pay incentive models,” and “[a]nalyzing large unstructured datasets to identify business insights, as well as providing and implementing recommendations on priorities for the business.” Such

---

<sup>2</sup> The Petitioner submitted documentation in support of 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>3</sup> A petitioner submits the LCA to the U.S. Department of Labor (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).

duties appear to align more closely with “Operations Research Analysts” (SOC code 15-2031) and “Business Intelligence Analysts” (SOC code 15.1199.08).

Specifically, the O\*NET Summary Report for “Operations Research Analysts” includes the following description and task: “Formulate and apply mathematical modeling and other optimizing methods to develop and interpret information that assists management with decision making, policy formation...” and “Present the results of . . . data analysis to management . . .” See O\*NET Summary Report for “Operations Research Analysts,” SOC code 15-2031 at <https://www.onetonline.org/link/summary/15-2031.00> (last visited July 24, 2019). Similarly, the O\*NET states that “Business Intelligence Analysts,” “produce financial market intelligence by querying data repositories and generating periodic reports,” and their duties include “analyze competitive market strategies through analysis of related product, market or share trends,” “synthesize current business intelligence or trends data to support recommendation for action” and “analyze technology trends to identify markets for future product development or to improve sales of existing products.” See O\*NET Summary Report for “Business Intelligence Analysts,” SOC code 15-1199.08 at <https://www.onetonline.org/link/summary/15-1199.08> (last visited July 24, 2019). Although the tasks for the proffered position also reflect duties that correspond to “Market Research Analysts,” the focus of the position appears to be more on formulating and applying mathematical models to improve aspects of the Petitioner’s business.

We note that when a proffered position involves a combination of O\*NET occupations, the Petitioner should designate the relevant occupational code for the highest paying occupation,<sup>4</sup> in this case “Business Intelligence Analysts.”<sup>5</sup> However, the Petitioner chose “Market Research Analysts,” which is the lowest paying occupational category, and the record does not sufficiently establish that the occupational category closely aligns to the proffered position.<sup>6</sup>

Furthermore, accepting degrees in generalized fields such as business and business administration indicates that more likely than not the proposed position does not qualify as a specialty occupation.<sup>7</sup> 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

---

<sup>4</sup> 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).

<sup>5</sup> For example, the prevailing wage for “Market Research Analysts” Wage Level III in the area of employment is \$94,411; “Operations Research Analysts” is \$101,587; and “Business Intelligence Analysts” is \$111,509. For more information, see <https://flcdatacenter.com/OesQuickResults.aspx?code=15-1199&area=□&year=18&source=1> (last visited July 24, 2019).

<sup>6</sup> Accordingly, the record also does not establish that the LCA corresponds with the petition. 20 C.F.R. § 655.705(b)

<sup>7</sup> A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor’s or higher degree in business administration with a concentration in a specific field, or a bachelor’s or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor’s or higher degree in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp.*, 484 F.3d at 147.

(Comm'r 1988). Similarly, a "business" degree without further specification does not establish the position as a specialty occupation.

We reviewed the letter from [redacted] [redacted] of the City University of [redacted] [redacted] who offers his opinion on the requirements of the proffered position. 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 mentions that he spoke with two high-level members of the organization; and (3) states that these duties require at least a bachelor's degree in business administration or a related field. [redacted]'s assertions in support of the instant petition are not persuasive.

In his evaluation, [redacted] restates the duties listed by the Petitioner. He also mentions several general duties of the proffered position and claims that the position holder must possess "bachelor-level knowledge" in courses such as business statistics, data analytics, microeconomics, and more. However, he asserts that the minimum degree requirement for the position is a bachelor's degree in business administration or a related field. He does not sufficiently articulate how the requirement of business administration degree, without further specification, establishes the proffered position as a specialty occupation. While a few related courses may be beneficial in performing certain duties of the position [redacted] 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.

Further, [redacted] references the *Occupational Outlook Handbook* and O\*NET in asserting that a "Market Research Analysts and Marketing Specialists" position is a specialty occupation. While [redacted] [redacted] claims that the duties of the position "match to a large extent" "Market Research Analysts and Marketing Specialists," he does not explain how he came to that conclusion or whether he considered other occupational categories such as "Operation Research Analysts" or "Business Intelligence Analysts." Therefore, we conclude that the opinion letter from [redacted] is insufficient to establish the nature of the proffered position. *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.").

The Petitioner has not sufficiently established the substantive nature of the position, which therefore precludes a conclusion that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because 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.

Accordingly, as the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies for classification as a specialty occupation.<sup>8</sup>

#### IV. CONCLUSION

The record does not demonstrate that the proffered position qualifies for classification as a specialty occupation. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of G- Inc.*, ID# 4089238 (AAO July 25, 2019)

---

<sup>8</sup> As the lack of probative and consistent evidence in the record precludes a conclusion that the proffered position is a specialty occupation and is dispositive of the appeal, we will not further discuss the Petitioner's assertions on appeal regarding the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).