



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

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

MATTER OF C-M-H- CO.

DATE: JUNE 14, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an advertising technology business, seeks to temporarily employ the Beneficiary as a “data engineer” 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 is a specialty occupation.

On appeal, the Petitioner asserts that the Director erred and that the proffered position is a specialty occupation.<sup>1</sup>

Upon *de novo* review, we will dismiss the appeal.<sup>2</sup>

## 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

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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 must establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what it claims is “more likely than not” or “probably” true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989).

- (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.<sup>3</sup> 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. ANALYSIS

The Petitioner develops digital advertising technology which assists in maximizing the traffic or data to generate leads for advertisers. The Petitioner indicates that its “search engine marketing technology leverages Big Data and optimizes in real time for the highest possible return on advertising spend.” The Petitioner states that it has a proprietary suite of software tools and a real time technology platform. The Petitioner designated the proffered position on the labor condition application (LCA)<sup>4</sup> as a Standard Occupation Classification (SOC) code 15-1199 “Computer Occupations, All Others”

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<sup>3</sup> This regulation states, in pertinent part: *Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States. *See* 8 C.F.R. § 214.2(h)(4)(ii).

<sup>4</sup> A petitioner is required to submit an LCA to the Department of Labor 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).

occupation. In response to the Director's request for evidence (RFE), the Petitioner identified the position as falling within SOC code 15-1199.06, "Database Architects," a sub-category of SOC code 15-1199.

The Petitioner asserts that the "position of data engineer involves highly complex and sophisticated responsibilities requiring exceptional technical knowledge and skills in statistical analysis and modeling, database architectures, SQL –based technologies, data modeling tools, data mining, and data warehousing solutions." The Petitioner adds that these responsibilities "are typically acquired through the attainment of a minimum of a Bachelor's degree in Computer Science, Computer Engineering or a related field."

#### A. Minimum Requirements

On appeal, the Petitioner contends that the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*), the Occupational Information Network (O\*NET), and the Foreign Labor Certification (FLC) Data Center Online Wage Library support its "requirement of a baccalaureate or higher degree or its equivalent as the minimum requirement for entry into the particular position of Data Engineer."

Preliminarily we observe that the Petitioner has not clearly stated its actual requirements to perform the duties of the proffered position. The Petitioner here appears to accept a general bachelor's degree as the minimum requirement for entry into its particular position.<sup>5</sup> However, as explained above, we interpret the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. If the Petitioner accepts a general bachelor's to enter into its particular position, the position is not a specialty occupation by the Petitioner's own standards.

We do agree that the three authoritative sources referenced by the Petitioner point toward a general bachelor's degree, and not a degree in a specific specialty, as the minimum requirement to enter into this particular position. For example, the *Handbook*<sup>6</sup> does not include a detailed profile for the occupational category "Database Architect."<sup>7</sup> The *Handbook's* summary data for this occupational

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<sup>5</sup> We have reviewed the Petitioner's statement on appeal that a few courses in the Beneficiary's master's degree program and foreign bachelor's degree program are directly related to the data engineer occupation. However, the Petitioner does not specifically identify what body or bodies of highly specialized knowledge is/are required to perform each particular duty, which particular course(s) of study provided such knowledge, and it does not explain how familiarity with or various certifications in the third party tools and technologies utilized would not suffice to perform the duties described. Moreover, 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 has not provided that evidence here.

<sup>6</sup> As the Petitioner noted, we often look to the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses, to assist in determining whether the occupation normally has a minimum requirement for entry into the particular position. We also review the *Handbook* when determining if there is a "degree requirement" (i.e., a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent) that is common to the industry for a particular occupation. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. The *Handbook* may be accessed at the Internet site <http://www.bls.gov/ooh/>.

<sup>7</sup> For additional information, see <https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in->

category reports that the typical entry-level education for the “Database Architect” occupation is a “bachelor’s degree,” without identifying a specific specialty.<sup>8</sup> Accordingly, the *Handbook* does not indicate that this is an occupational group for which the minimum requirement for entry normally is at least a bachelor’s degree *in a specific specialty*, or its equivalent. When the *Handbook* does not provide definitive evidence that the normal or common educational or training requirements of a particular occupation require a bachelor’s degree in a specific specialty, or its equivalent, it is the Petitioner’s responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a conclusion that the particular position qualifies as a specialty occupation.

We have considered the Petitioner’s assertion that the O\*NET and FLC Data Center Online Wage Library are alternative authoritative sources which also should be used to assess whether a particular position is a specialty occupation. The Petitioner notes that these sources place this occupation in the Job Zone Four category. Although these are authoritative sources, neither O\*NET nor the FLC Data Center Online Wage Library support a claim that this occupation is a specialty occupation. While a Job Zone “Four” rating, groups the “Data Architect” occupation among occupations for which “most . . . require a four-year bachelor’s degree, but some do not,” it does not indicate that four-year bachelor’s degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation.<sup>9</sup> Neither the O\*NET nor the FLC’s identification of the occupation as a Job Zone Four occupation establishes this position as a specialty occupation.

The Petitioner has not presented probative evidence establishing that this occupation normally has a minimum requirement of a bachelor’s degree in a specific specialty for entry into the particular position as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Similarly, the record does not include probative evidence that there is a “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) that is common to the industry for a particular occupation as required by the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

## B. Engineering Specialty

The Petitioner also asserts on appeal that the proffered position involves an engineering specialty and thus under the regulatory definition at 8 C.F.R. § 214.2(h)(4)(ii) should categorically be considered a

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detail.htm#Computer and mathematical occupations (last visited Jun. 13, 2019).

<sup>8</sup> *Id.*

<sup>9</sup> Moreover, the Specialized Vocational Preparation (SVP) rating cited within O\*NET’s Job Zone Four designates this occupation as 7 < 8. An SVP rating of 7 to less than (“<”) 8 is even less persuasive in establishing such an occupation as a specialty occupation. This rating indicates that the occupation requires “over 2 years up to and including 4 years” of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require. Further, the summary report provides the educational requirements of “respondents,” but does not account for 100% of the “respondents.” Further still, and most importantly, the respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level) and the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty. The O\*NET does not assist in establishing the proffered position is a specialty occupation. For additional information, see the O\*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

specialty occupation.<sup>10</sup> The Petitioner also refers to a previously submitted list of engineering programs which indicates that computer engineering is one of a number of engineering majors.<sup>11</sup> However, the question here is not whether a computer engineering position could be considered an engineering occupation, but whether the nature of the Petitioner's data engineer position is actually an engineering position requiring the theoretical and practical application of a body of highly specialized knowledge and attainment of at least a bachelor's degree in a specific specialty or its equivalent. The Petitioner has not provided this evidence.

We also reviewed the other previously submitted articles<sup>12</sup> to ascertain if the articles provide persuasive authority that the proposed responsibilities of the position "are typically acquired through the attainment of a minimum of a Bachelor's degree in Computer Science, Computer Engineering or a related field." The articles, however, undermine this claim.

One article, identifies a data scientist, a DevOps engineer, and an electrical engineer as the top tech jobs in the United States.<sup>13</sup> The article indicates that many of the jobs on the list, including an electrical engineer, require proficiency in "soft skills," and in tech that requires the ability to creatively solve problems to deliver business value. The article does not refer to the necessity of a bachelor's degree in a specific specialty. Another article talks about tech skills as a "hot commodity" in the job market but does not discuss the requirements for any of the top tech jobs included in the report. Yet another article discusses skills in big data and technology and refers to certifications in various products as well as experience but does not offer a conclusion that a bachelor's degree in a specific specialty is required.

The record also contains an article that appears to be written by a company recruiting on behalf of universities' data architect masters in science programs. The article includes an interview with a big data architect at [redacted]. He states that "[d]ata architects are likely to be senior-level employees with plenty of years in business intelligence under their belts" and that this field has opportunities for skilled candidates with a variety of backgrounds, for example, an art or business degree.<sup>14</sup> This same article

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<sup>10</sup> The Petitioner mistakenly adds a sub-category to this regulation but quotes the definition of specialty occupation found in the regulation at 8 C.F.R. § 214.2(h)(4)(ii).

<sup>11</sup> This is a list of universities that offer undergraduate engineering programs in a number of engineering disciplines, including that of a computer engineer. It does not identify any particular courses or requirements to complete any of the programs.

<sup>12</sup> The Petitioner asserts that these articles confirm that a data engineer, data architect or data scientist has a minimum requirement of a general bachelor's degree to enter into the position. Again, if the position requires only a general bachelor's degree, the position is not a specialty occupation.

<sup>13</sup> The Petitioner has not established how its proffered position incorporates the duties of a data scientist or a DevOps engineer. We note that while a data architect and a data engineer may be considered the same or similar occupation, a "Data Scientist" occupation falls within a different occupation, an occupation that requires a significantly higher wage. See <https://flcdatcenter.com/OesQuickResults.aspx?code=15-1111&area=31084&year=18&source=1>. Similarly a DevOps engineer most closely relates to a "Software Developer, Applications" occupation which also requires a significantly higher wage. See <https://flcdatcenter.com/OesQuickResults.aspx?code=15-1132&area=31084&year=18&source=1>.

<sup>14</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, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

includes an additional section indicating that to become a data architect one should start with a bachelor's degree in computer science, computer engineering, or a related field. In another section the article states that one "can take a variety of paths to become a data architect" including working as a database administrator or as an entry-level programmer. The variety of methods available to enter this occupation does not adequately support the Petitioner's claim that this occupation typically requires a minimum of a bachelor's degree in computer science, computer engineering, or a related field. We also observe that this article appears to recognize that experience plays a role in entering into this occupation. The experience requirement is mentioned in another article, as well, which states that "[m]ost data architects have a bachelor's degree in information technology (IT) as well as years of experience in the IT field." The Petitioner, here, does not specify that experience is a requirement to enter into its particular position. Thus, it is not clear that these articles are discussing positions that are parallel to the proffered position and accordingly are relevant to establishing the proffered position as a specialty occupation. The articles while informative on a wide range of technology occupations do not establish a consistent methodology, such as a bachelor's degree in a specific specialty, or its equivalent, to enter into the particular proposed position.

It is not possible to conclude from the articles submitted that a data architect occupation requires a minimum of a bachelor's degree in a specific specialty. The Petitioner has not established that the proffered position itself is an "engineering" position and more importantly has not submitted probative evidence establishing that the occupation requires the theoretical and practical application of a body of highly specialized knowledge and attainment of at least a bachelor's degree in a specific specialty or its equivalent.

### C. Nature of the Proffered Position

We have reviewed the Petitioner's description of duties provided, in response to the Director's RFE. The Petitioner stated that the Beneficiary "will build massive reservoirs for big data," "will develop, construct, test and maintain architectures such as databases and large-scale data processing systems," and "will determine what data management systems are appropriate and address problems associated with database integration and unstructured data sets." The Petitioner stated further that the Beneficiary's ultimate aim as a data engineer is to provide clean, usable data to whomever in the company may require it. The Petitioner also listed duties including examples of what the duties entail under several different categories, as well as the percentage of time spent performing in each category which are paraphrased as follows (expanded description omitted for brevity):

- Work with business and cross functional teams on full life-cycle of data warehouse development projects – 10%
- Gather requirements from business units and translate them to ETL (extract, transform, and load) design documents – 10%
- Work with other Data Engineering team members in designing, developing, coding, and testing ETL solutions – 12%
- Work with the project management team regarding the timelines, planning and the level of effort for the projects and work orders – 5%
- Provide production support, resolve production issues, and participate in Agile product development process as a member of the Data Engineering team – 15%

- Oversee data warehouse in Redshift, as well as configure and maintain reports in Tableau; perform data analysis using SQL programming language and build data warehouses using ETL tools such as Talend Big Data Module – 12%
- Extract, translate, and load data using Talend and Infomatica, and deliver appropriate BI (Business Intelligence), data warehousing, reporting, and analytical infrastructure to support the Petitioner’s assets – 12%
- Code in ETL tools using Talend, SQL coding, and coding with C# – 12%
- Utilize SQL server components such as SSIS and Stored Procedures, and use Tableau or other BI tool, including Microstrategy, POWER BI and Redash to create queries – 12%

The Petitioner asserts on appeal that its lengthy description of the proposed duties demonstrates that the position is complex and unique. However, a lengthy narrative must still convey the actual duties the Beneficiary will perform and how the duties will be performed within the context of the Petitioner’s business operations. On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner claims that it employs 786 persons and that it has offices in [redacted] California (where the Beneficiary will be located), as well as in New York and Florida. The Petitioner does not include its organizational chart, describe its staffing, describe the ongoing activities in the three locations, or otherwise provide evidence of its organizational hierarchy. Without such information we cannot ascertain the Beneficiary’s role within the organization or even a particular team. Even considering the Petitioner’s narrative regarding the proposed duties, the Petitioner does not sufficiently communicate the nature of the actual tasks involved and the level of responsibility authorized within the company.

For example, the Petitioner expands the general task of working with other data engineering team members in designing, developing, coding, and testing ETL solutions to include subtasks such as “work on specific modules of each client project and perform integration testing to finalize the process,” “perform Quality Assurance checks once the development is complete,” and “provide production support of any failures occurred in the ETL process and address them as soon as possible.” The Petitioner, however, does not sufficiently explain these processes of testing, quality assurance, and production support and how any particular aspect of these tasks necessitates the worker to possess knowledge normally associated with a bachelor’s or higher degree in a specific specialty, or its equivalent. In a separate general task the Petitioner indicates that the Beneficiary will provide production support, resolve production issues, and participate in the Agile product development process. The Petitioner expands this task by adding that the Beneficiary will “actively participate in product support duties like system outage resolution, erroneous data cleanup, production incident communication and management, communication with business stakeholders and data providers” and “perform troubleshooting of data issues such as incorrect data entry or data attribution.” Although the Petitioner provides examples of production support, this addition does not assist our understanding of the Beneficiary’s level of responsibility and why these duties require a bachelor’s degree in a specific specialty, or its equivalent.

The Petitioner’s job description does not detail the complexity or uniqueness of the job duties, supervisory duties (if any), independent judgment required, or the amount of supervision received. Here, the Petitioner does not sufficiently develop relative specialization and complexity or uniqueness as an aspect of the duties of the position, and the tasks described provide little insight into the level of

complexity or demands associated with the proposed duties or the specialized knowledge required to perform them. The Petitioner does not identify specific tasks that are so specialized and complex or unique that only a specifically degreed individual could perform them. The description of the Petitioner's business operations also does not provide insight into the particular duties of the proffered position as it will be performed, such that we can conclude that the duties described incorporate specialized and complex or unique tasks that require a bachelor's degree in a specific specialty.

In establishing a position as a specialty occupation, the Petitioner must describe the specific duties and responsibilities to be performed by the Beneficiary in the context of its business operations, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. The generalized information provided here does not sufficiently explain the duties and level of responsibility of the position in relation to the Petitioner's actual business operations. We understand that the Beneficiary will require technical skills and knowledge, but the record is insufficient to establish that the duties require both the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as the minimum for entry into the occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation).

The Petitioner has not established that the proffered position is a specialty occupation under the requirements of the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).<sup>15</sup> The Petitioner has not presented evidence or argument sufficient to establish that, more likely than not, the proffered position is a specialty occupation as defined by the regulations and the statute.

### III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. 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 C-M-H- Co.*, ID# 3840364 (AAO June 14, 2019)

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<sup>15</sup> The Petitioner does not contest the Director's decision on appeal pertaining to the criterion at the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) or (4) and we agree with the Director that the Petitioner has not satisfied these criteria.