



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

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

In Re: 22107307

Date: AUG. 29, 2022

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to employ the Beneficiary 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 Vermont Service Center Director denied the petition, concluding the Petitioner did not establish that the proffered position is a specialty occupation. The matter is now before us on appeal. On appeal, the Petitioner asserts that the Director erred by denying the petition.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . .” (emphasis added). 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.

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act. 8 C.F.R. § 214.2(h)(4)(i)(B)(2). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

II. ANALYSIS

Upon *de novo* review of the record, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record provides insufficient and inconsistent information regarding the proffered position, which in turn precludes us from understanding the position’s substantive nature and determining whether the proffered position qualifies as a specialty occupation.¹

When determining whether a position is a specialty occupation, we look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the performance of those duties within the context of that particular employer’s business operations. The Petitioner is a telecommunications company that provides computer network, edge cloud, security, communication and collaboration solutions to customers in over 60 countries. The Petitioner initially indicated that it seeks to “employ [the Beneficiary] in the *entry-level* position of “lead data analyst,

¹ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position. While we may not discuss every document submitted, we have reviewed and considered each one.

HR analytics.”² The Petitioner provided descriptions of the duties of the proffered position and the percentage of time that the Beneficiary will devote to these tasks, which we have carefully reviewed and considered, but for the sake of brevity will not include here. The Petitioner indicates that a minimum of a bachelor’s degree in business analytics, statistics, or a closely related field is required for entry into the position, along with “knowledge in using statistical and data visualization tools (e.g., SPSS, r. Tableau, Python, Oracle, Hadoop, etc.).”

In response to the Director’s request for evidence (RFE), the Petitioner asserted that “one normally cannot qualify to perform the duties of the [proffered position] through a degree in an unrelated field. While there may be exceptions including entry-level positions or less complex roles in smaller organizations, the [position] offered to the Beneficiary by [the Petitioner], clearly is not one of them.” The Petitioner’s job title for the proffered position suggests that she is performing a role as a *lead* data analyst, however the Petitioner incongruously states that her position is entry-level and has not adequately explained how the proffered position’s role within its organization entails leadership responsibilities. The Director specifically requested evidence that would delineate the Petitioner’s organizational and staffing hierarchy, and the Beneficiary’s role within in order to ascertain the nature of the proffered position within its organizational hierarchy. But the Petitioner has not sufficiently addressed this aspect.³ For instance, on appeal the Petitioner provides a letter from the Beneficiary’s supervisor who indicates that “within my team [], we employ six lead data analysts or closely related positions.” She indicates:

The HR Analytics team [] is responsible to collect and analyze workforce data to enable our leaders to make strategic decisions that impact our business based on evidence rather than intuition. We support the senior leaders of our organization to provide data insights to make decisions or drive changes to meet our overall people resources goals which enable us to meet our overall organization goals.

She further notes that as a lead data analyst the Beneficiary “partners with the following department/groups [] for all their analytical needs: Technology, Marketing, Mass Markets (Consumers Business), Finance, Legal & Corporate Administration and Labor Relations.” Without more, we conclude that the relative specialization and complexity of the Beneficiary’s lead, entry-level role within the context of her team’s work activities has not been sufficiently delineated in the record. The Petitioner emphasizes throughout the proceeding that the Beneficiary will liaise or interact with various internal stakeholder groups, including:

- [M]ake recommendations on complex business issues in partnership with functional leadership.
- Work with stakeholders to understand business objectives to design analytic models to provide data insights to best support data-driven business decisions. . . .
- Build partnerships with business leaders and with other functional analytics groups to increase awareness of available data, improve business acumen and analysis.

² The Petitioner most recently employed the Beneficiary through STEM-related post-completion optional practical training and has provided copies of wage statements for her employment with the Petitioner. 8 C.F.R. §§ 274.a.12(c)(3)(i)(C), 214.2(f)(10)(ii)(C).

³ “Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition].” 8 C.F.R. § 103.2(b)(14).

- Partner closely with HRIS on required system functionality to collect, analyze, present data and drive data accuracy.

Though these duties provide a general overview of work that a data analyst might perform and the operational components that the Beneficiary will collaborate with, the scope and complexity of the actual tasks involved in these duties remains unclear. Here, the Petitioner described the job duties of the position, but the evidence does not show the operational structure within the Petitioner's data analytics initiatives in a manner that would establish the substantive nature of the Beneficiary's role.

We also observe inconsistencies in the record which raise additional questions as to the actual, substantive nature of the proffered position. The Petitioner designated the proffered position on the labor condition application (LCA) as an Occupational Information Network (O*NET) Standard Occupation Classification (SOC) code 15-1199.08 "Business Intelligence Analysts" under the SOC occupation 15-1199 "Computer Occupations, All Other" occupation.⁴ Here, the Petitioner does not require prior work experience and indicates that the proffered position is a Level II position on the labor condition application (LCA). DOL guidance states that a Level II wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have attained, either through education or experience, a good understanding of the occupation, but who will only perform moderately complex tasks that require limited judgment.⁵

In focusing on step 2 of the DOL guidance regarding experience, we note that while the Petitioner stated in the record that it requires at least a bachelor's degree in business analytics, statistics, or a closely related field, its own job advertisements for (1) the instant position and (2) a digital data analyst position that the Petitioner asserts is "closely related" require differing degrees and significant work experience beyond the requirements for a Level II position, as follows:

	Education Requirements	Experience Requirements
(1)	Bachelor's degree or equivalent; a master's degree in a quantitative discipline . . . preferred.	2+ years of experience in Business Intelligence, Data Analytics, or related quantitative research functions or algorithmics; 3+ years financial services industry experience with focus on Capacity Planning and or Operations Management; 3+ years reporting, analytics, or business intelligence experience.
(2)	Bachelor's degree in computer science, business administration, or a related field, <i>or equivalent work experience</i> . Master's degree a plus.	4+ years of experience with B2B or (B2C) data analytics.

⁴ O*NET Online has updated the occupation code of SOC 15-1199.08, "Business Intelligence Analysts," to SOC 15-2051.01. For the purposes of this decision, we will refer to the occupation code, SOC 15-1199.08. *See generally* https://www.onetonline.org/Archive_ONET-SOC_2010_Taxonomy_09_2020.

⁵ A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009); http://fledatacenter.com/download/NPWHCGuidance_Revised_11_2009.pdf.

These job postings appear to be for more senior, experienced positions than the proffered position. Moreover, even if we assume that the job postings include duties and responsibilities that are closely related to the duties listed for the proffered position, these job postings confirm that there are a variety of paths available to enter the occupation to include the obtainment of an unspecified bachelor's degree or simply work experience.

Additionally, the Petitioner has submitted its competitors job advertisements for positions it asserts are “parallel” to the instant petition, such as (1) [T-’s] senior analyst, business systems position, (2) [S-’s] senior data analyst position, and (3) [D-’s] senior supply & intelligence analyst position, which require either differing degrees, significant work experience, or work experience only, as follows:

	Education Requirements	Experience Requirements
(1)	Bachelor’s degree in business or quantitative field <i>or equivalent work experience.</i>	No specific amount of work experience specified
(2)	Bachelor’s degree in quantitative sciences, including statistics, computer science, engineering, business with focus on analytics. Master’s degree in similar discipline preferred.	5+ years of work experience solving business problems through analytics (with a bachelor’s degree), or 2+ years of experience solving business problems through analytics (with a master’s degree).
(3)	Bachelor’s degree with a concentration in business, math, finance, economics, or related fields.	3-6 relevant years of work experience with strong experience handling large data sets.

The job postings also raise significant concerns that if the proffered position is closely related or parallel to the positions advertised - as the Petitioner contends, the Petitioner has not submitted a certified LCA that supports the petition.⁶ As noted, the Petitioner identified the proffered position as a wage Level II position on the certified LCA. The “Business Intelligence Analysts” position for a Job Zone Four occupation with a Specialized Vocational Preparation (SVP) rating of “7.0 < 8.0” requires a three-level increase in wage level for positions requiring more than four years of experience (as both of the Petitioner’s job postings do).⁷ Thus, even though the job postings may include duties similar to the duties of the proffered position, the majority of the submitted job postings appear to be for more senior positions than the proposed position; or, if the duties and levels of responsibility truly correspond to the proffered position, the Petitioner has not provided a certified LCA that includes a wage level that is commensurate with the duties and responsibilities required of its position. The Petitioner must resolve these inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

⁶ See 20 C.F.R. § 655.705(b), which requires that USCIS ensure that an LCA supports the H-1B petition filed on behalf of the Beneficiary.

⁷ See https://www.onetonline.org/Archive_ONET-SOC_2010_Taxonomy_09_2020/link/summary/15-1199.08. See also *Prevailing Wage Determination Policy Guidance*, *supra*.

Further, considering the degree requirements presented in the job advertisements (such as an unspecified bachelor's degree, or a bachelor's degree in business administration, math, finance, engineering, or computer science) we conclude they are collectively too varied and broad to be considered a degree in a specific discipline, or its equivalent. Again, we note that in some of the job advertisements work experience alone appears to suffice for entry into the position. To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. Therefore, the job advertisements are not probative evidence sufficient to substantiate the Petitioner's assertion that it requires at least a bachelor's degree in business analytics, statistics, or a closely related field is required for entry into the position. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner also submitted opinion letters in support of the petition to substantiate its assertions regarding its prerequisites for the position which we have reviewed and considered. For instance, on appeal the Petitioner provides an opinion letter from K-, a professor at D- University. In his letter, the professor (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) quotes verbatim the position description that the Petitioner provided in support of the petition; and (3) states, among other things, that the position requires highly specialized knowledge "that is shared by Business Analytics, Statistics, and closely related fields." He further opines that this "knowledge can be imparted *only* by Bachelor-level education in programs specializing in these fields."

The professor asserts that "the knowledge areas pertinent to these fields [are] best documented in the INFORMS Analytical Body of Knowledge (ABok) as a valuable resource for professionals in business and industry who are looking for ways to fully and effectively integrate analytics into their organizations' problem-solving, decision-making, and strategic planning."⁸ In his opinion:

Because the duties put forth by [the Petitioner] for the [proffered position] discussed herein will involve candidates in the application of these quantitative technologies, it is evidence that the knowledge areas categorized in the ABok adequately portray the expertise necessary to perform the role. . . . It is my opinion that the ABok documents the knowledge typical of Bachelor-level study of Business Analytics, Statistics, and related fields, and therefore if the duties of the [proffered position] require the application of that knowledge, it follows that the position requires a bachelor's degree in Business Analytics, Statistics, or related.

Here, the professor confuses *the ability* of a degreed person to perform the duties of the proffered position with a degree requirement *in order to* perform the duties. While the professor may draw inferences that data analytic and statistics-related courses may be beneficial in performing certain duties of the position, we disagree with his inference that such a degree is required in order to perform the duties of the proffered position. Put simply, stating that a person with a bachelor's degree in business analytics, statistics, and closely related fields could perform the duties of the proffered

⁸ See generally <https://info.informs.org/abok>.

position is not the same as stating that such a degree is required to perform those duties. As such, the professor's analysis misconstrues the statutory and regulatory requirements of a specialty occupation.

Although the proffered position may require certain knowledge competencies within the business analytics and statistics fields that are found in the ABok, the professor does not adequately explain why the specific duties themselves require knowledge associated with at least a bachelor's degree in a specific specialty. Also, the ABok does not indicate that a bachelor's degree in a specific specialty is necessary to obtain the knowledge for the particular position.

While the professor opines that the duties of the Petitioner's position require that "*only*" a candidate who has attained at least a bachelor's degree in the aforementioned fields can perform them, he does not acknowledge or discuss other methods that could also lead to a sufficiently similar knowledge set, for example, the amount of required training or work experience to gain this knowledge, alternate degrees, or certifications that would be acceptable.

Though the professor indicates that he reviewed the Petitioner's letter and position description submitted in support of the petition, his letter does not show that he conducted further research specific to the proffered position, the Petitioner, and its industry in order to arrive at his conclusions. Further, nothing in the record suggests that the professor analyzed the Petitioner's own job advertisements and the job postings of its competitors which appear to present position prerequisites that are contrary to the professor's conclusions. The Petitioner must also resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, Dec. at 591-92.

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791. However, we are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'"). Here, the submitted opinion letters, without more, do not provide a sufficient basis substantiate the Petitioner's asserted prerequisites for the position.

Upon review of the totality of the record, we determine it is insufficient to establish the substantive nature of the work to be performed by the Beneficiary, 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 4.⁹

⁹ As the lack of probative and consistent evidence in the record precludes a conclusion that the proffered position is a

The Petitioner has not presented consistent probative evidence or explanations sufficient to establish that, more likely than not, the proffered position is a specialty occupation as defined by the regulations and the statute. *Matter of Chawathe*, 25 I&N Dec. at 376.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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.

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).