



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

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

In Re: 22376637

Date: AUG. 30, 2022

Appeal of California Service Center Decision

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

The Petitioner, a company in the automotive sales industry, seeks to temporarily employ the Beneficiary as an analyst, quantitative finance 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 California Service Center denied the petition, concluding that the Petitioner had not demonstrated that the proffered position qualifies as a specialty occupation. On appeal, the Petitioner submits a brief and additional evidence, and asserts that the Director erred in 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*. *See 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. 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 offered 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as an analyst, quantitative finance. In response to the Director’s request for evidence (RFE), the Petitioner provided the following job duties for the proffered position:

- Own and maintain models to predict vehicle values (25%)
 - Utilize advance mathematical modeling techniques to implement predictive models in python, which are used in pricing vehicle.
- Own and maintain production level vehicle prediction algorithms (15%)
 - Deploy and monitor predictive models in production that facilitate automation of Sell to [the Petitioner] pricing engine.
 - Analyze and implement pricing changes to sell to [the Petitioner] platform to meet current market trend-condition and [the Petitioner’s] internal needs.
- Financial modeling to predict project and losses for vehicle purchases (25%)
 - Build and maintain predictive model to predict conversion from appraisal to completed acquisition. Which is in turn utilized in making tactical policy changes.
- Financial risk modeling to determine how much risk is present in a particular business, investment, or series of cash flows (15%)
 - Synthesize policy changes based on historical and current market trends/data to mitigate financial risk of vehicle acquisitions.

- Data mining patterns in data to help with vehicle value predictions (10%)
 - Optimize Vehicle pricing platform by leveraging datamining and pattern detection algorithms.
 - Analyze historical data to generate scenario analysis and simulation analysis to guide pricing policy changes for long/short term.
- New data validation with external partners for model building (5%)
 - Explore new optimization methodologies as well as new data sources to aid current pricing platform of sell to [the Petitioner].
- Data ETL pipeline creation and maintenance (5%)
 - Perform various ad-hoc data wrangling exercises to warehouse data for analytics and modeling purpose.

The Petitioner stated that the minimum entry requirement for the proffered position is at least a bachelor's degree in computer science, finance or a related field of study.

III. ANALYSIS

For the reasons discussed below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, we find that the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

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 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.

On the labor condition application (LCA)² submitted in support of the petition, the Petitioner designated the proffered position under the occupational category as "Computer Occupations, All Other" corresponding at the time the instant petition was filed to the Standard Occupational Classification (SOC) code 15-1199; more specifically, the Petitioner stated that the position corresponds to the SOC sub-code and category 15-1198.08, "Business Intelligence Analysts." As is the case in this petition, there are occupational categories the *Handbook* does not cover in much, if any, detail.³ Accordingly, in instances such as this, the *Handbook* is not determinative.

When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is the Petitioner's burden to provide

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

² A petitioner submits the LCA to DOL to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

³ For additional information, see <https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm>.

probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. When more than one authoritative source exists, we will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

The Petitioner references the O*NET summary report for “Business Intelligence Analysts” - SOC code 15-1199.08. The O*NET Summary Report provides general information regarding the occupation, but it does not support the Petitioner’s assertion regarding the educational requirements for the occupation. For example, the Job Zone Four designation indicates that most, but some do not, require a four-year bachelor’s degree. It does not specify the specific field of study, if any, from which the degree must come. The occupation’s Specialized Vocational Preparation (SVP) rating of 7 < 8 is even less persuasive. An SVP rating of 7 to less than (“<”) 8 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, experience, and formal education which, by definition, includes high school education and commercial or shop training.⁴ The SVP rating also does not specify the particular type of degree, if any, that a position would require. For all of these reasons, we are not persuaded by the Petitioner’s citations to O*NET.

On appeal, the Petitioner states that the proffered position requires that individuals use technical, computer science related concepts and programming in order to examine finance related data sets to determine appropriate models to utilize for determining automobile values. However, the Petitioner did not sufficiently discuss how a detailed course of study leading to a specialty degree demonstrates how such a curriculum would be necessary to manage the duties of this position. The Petitioner did not sufficiently establish how a particular coursework within the stated disciplines contributes to performing any specialized and complex elements of the proffered position. While a few related courses may be beneficial, or even required, we conclude that the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to successfully serve in the proffered position. Consequently, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

⁴ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

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)).

As previously discussed, the Petitioner has not established that an authoritative source reports at least a bachelor's degree in a specific specialty, or its equivalent, is required for the proffered position, and we incorporate our previous discussion on this matter. In addition, the Petitioner did not submit any letters or affidavits from similar firms in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals." On appeal, the Petitioner submits an article from indeed.com that discusses the position of business intelligence analyst. However, in the education section of the article, it stated a bachelor's degree in statistics, computer science, business administration or a related field is required to fill the position of a business intelligence analyst. The requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. 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 (Comm'r 1988). As explained above, we interpret 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. We have consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147.

In support of the petition, the Petitioner submitted four job vacancy announcements for our consideration under this prong. To be relevant for this consideration, the job vacancy announcements must advertise "parallel positions," and the announcements must have been placed by organizations that (1) conduct business in the Petitioner's industry and (2) are also "similar" to the Petitioner. These job vacancy announcements do not satisfy that threshold.

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. On appeal, the Petitioner submits two articles explaining how [] and [] are competitors of the Petitioner. Upon review of the two articles, they discuss how the companies and the Petitioner are in similar markets of [] car sales but they do not provide enough evidence of the organizations themselves and the scope of operations and revenue and staffing to determine if they are similar to the Petitioner.

We will next consider whether the advertised job opportunities could be considered “parallel positions.” The job postings provide a brief description of the job duties but it is very difficult to determine if the positions are parallel to the proffered position.

For all of these reasons, the Petitioner has not established that these job vacancy announcements are relevant. Even if that threshold had been met, we would still find that they did not satisfy this prong of the second criterion, as they do not indicate that a bachelor’s degree in a specific specialty, or the equivalent, is common to the industry in parallel positions among similar organizations. If we list the degrees required within the four job postings, they include the minimum requirement of a bachelor’s degree in computer science, mathematics, engineer, statistics, analytics, finance, business, information technology, accounting economics, data analytics, and quantitative. Collectively, the advertisements indicate that the positions, if similar to the proffered position, do not have a degree requirement “in the specific specialty (or its equivalent),” as required. Section 214(i)(1)(B) of the Act (emphasis added).⁵ See *Royal Siam Corp.*, 484 F.3d at 147 (a general-purpose bachelor’s degree, such as a degree in business, without more, will not justify a conclusion that a particular position qualifies for classification as a specialty occupation); cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988).

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, as the evidence does not establish that similar organizations in the same industry routinely require at least a bachelor’s degree in a specific specialty, or its equivalent, for parallel positions, not every deficit of every job posting has been addressed.

Accordingly, the Petitioner has not satisfied the first alternative prong of the criterion at 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.

⁵ While the statutory “the” and the regulatory “a” both denote a singular “specialty,” we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor’s or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, a minimum entry requirement of a degree in disparate fields, such as computer science and economics, would not meet the statutory requirement that the degree be “in the specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required “body of highly specialized knowledge” is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner has not done so here.

When discussing H-1B employment, the Petitioner's description must be comprehensive enough to properly ascertain the minimum educational requirements necessary to perform those duties. Although the Petitioner provided, in response to the RFE, a more extensive job description with percentages of time spent on each duty, 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.

We note that while a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. Upon review, the record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

We do not question that the duties described require a basic understanding of a technology position; however, as discussed above, the Petitioner has not established that the proffered position requires a bachelor's degree in a specific specialty, rather it appears from the record that such a position requires at most knowledge of technical concepts that can be attained in a number of ways.

The Petitioner claims that the Beneficiary is well-qualified for the position and references the Beneficiary's education and experience as evidence that the proffered position is a specialty occupation. However, 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. Here, the Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Thus, it cannot be concluded that the Petitioner has 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.

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 position. *See Defensor*, 201 F.3d at 387-88. Were U.S. Citizenship and Immigration Services limited solely to reviewing the Petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement. *Id.* Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

In its RFE response, the petitioner stated that it has an established employment practice of hiring individuals with a minimum of a bachelor's degree or higher for the same of similar position. The petitioner provided resumes for two current employees on the Beneficiary's team who report to the

same manager/supervisor as the Beneficiary. According to the submitted resumes, one employee earned a bachelor's degree in finance and the other employee earned a bachelor's degree in management science and engineering and a minor in economics. The Petitioner did not provide the job duties of these two positions to determine if they perform similar day-to-day duties as the Beneficiary. The job titles for these two employees are senior analysts when the proffered position is not a "senior" position, and the Petitioner did not explain the difference between the positions. In addition, as noted by the Director, the Petitioner's job announcement for the senior quantitative analyst, finance position required a bachelors degree in mathematics, engineering, science, economics, or finance. Therefore, the Petitioner has not established that a quantitative analyst, finance position requires a bachelor's degree in a specific specialty, rather it appears from the record that such a position requires at most knowledge of technical concepts that can be attained in a number of ways.

Further, even if these individuals were employed in the same or similar position, we observe that the Petitioner was established in 2013 and currently has 7,200 employees. Consequently, it cannot be determined how representative the Petitioner's claim regarding two current employees (over a 9-year period of time) is of the Petitioner's normal recruiting and hiring practices. 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.

Here, the Petitioner claims that the position's nature and the specific duties are 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. The Petitioner provided samples of work product created by the Beneficiary to provide context of his duties. However, the record does not sufficiently demonstrate that the duties of the proffered position are more specialized and complex than other positions in the occupational category. While we understand that the Beneficiary must have some skills and knowledge in order to perform the duties of the proffered position, the Petitioner has not sufficiently explained how these tasks require the attainment of a bachelor's or higher degree in the specific specialty or its equivalent as a minimum for entry into the occupation.

We have reviewed the opinion of [REDACTED] Professor in the Department of Computer Science and Engineering at the University of [REDACTED] [REDACTED] opines that the technical nature of the job duties necessitates a minimum of a bachelor's degree in a field such as computer science, finance, or a closely related field. [REDACTED] letter does not establish that he is qualified to determine whether the 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. [REDACTED] indicated that he is working as a full-time faculty member of the University of [REDACTED] since 2006 but he does not establish how he acquired personal knowledge of current industrywide hiring practices in his capacity as an academic instructor for the past 16 years. [REDACTED] does not provide sufficient detail regarding his professional experience in the industry and how recent those years were. He also does not discuss

how he would have acquired personal knowledge of organizations' current business intelligence analyst hiring practices through those roles.

In addition, [] contends the position's job duties correspond to some of the knowledge contained in the *2013 Curriculum Guidelines for Undergraduate Programs in Computer Science* (Curriculum), published by the Association of Computing Machinery (ACM). In the professor's opinion, the Petitioner's job duties could be matched to the knowledge areas listed in the Curriculum, suggesting a high degree of competence and that the job duties can only be satisfactorily performed by an individual with bachelor's-level competence in computer science or finance, or a related technical field. However, these assertions are not persuasive. Although the proffered position may require certain knowledge competencies within the computing field that is also found in the aforementioned university curriculum guideline, the professor does not sufficiently explain why the specific duties themselves require knowledge associated with at least a bachelor's degree in a specific specialty. Also, the Curriculum does not indicate that a bachelor's degree in a specific specialty is necessary to obtain the knowledge for the particular position, but its purpose is to develop a postsecondary computer science curriculum. The professor's reliance on the Curriculum document is not persuasive as it does not support a conclusion that the Petitioner's particular position is so complex or unique that only a specifically degreed individual could perform them or that the duties are specialized and complex such that the duties are usually associated with a bachelor's degree in a specific specialty. In addition, he does not discuss other methods that also could lead to a sufficiently similar knowledge set, for example, the amount of required training or experience to gain this knowledge, alternate degrees, or certificates that would be acceptable. As such, the opinion letter does not provide a sufficient basis to establish that the duties described are "complex or unique" or "specialized and complex" such that the position requires a bachelor's degree in a specific specialty.

Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. For the reasons discussed above, the evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

IV. CONCLUSION

As the Petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation. In visa petition proceedings, it is a 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 here, and the petition will remain denied.

ORDER: The appeal is dismissed.