



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

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

In Re: 21361551

Date: JUL. 18, 2022

Appeal of Vermont Service Center Decision

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

The Petitioner, a civil aviation training school, seeks to temporarily employ the Beneficiary as a “training and development manager” under the H-1B nonimmigrant classification for specialty occupation. Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish that the position is a specialty occupation under any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The matter is now before us on appeal.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit by a preponderance of the evidence. We review the questions in this matter *de novo*. Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum

requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). We construe the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”).

II. PROFFERED POSITION

The Petitioner seeks to employ the Beneficiary as a “training and development manager.” The Petitioner designated the proffered position on the labor condition application (LCA) as being located within the “Training and Development Managers” occupational category, corresponding to the standard occupation classification (SOC) code 11-3131, at a Level I wage.

The Petitioner states that the duties of the proffered position include conducting ground and flight instruction for new pilots; maintaining compliance with federal aviation administration (FAA) regulations and policies when developing, implementing, and critically assessing training programs; updating training programs to ensure they comply with FAA regulations; evaluate the effectiveness of training programs and instructors; managing and training approximately 40 flight instructors; setting and managing spending budgets; evaluate staff; planning, coordinating, and directing skills and knowledge-enhancement programs for company staff and students; assessing employee needs for training and oversee training and development of staff; and creating and managing training budgets.

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.

A. Lack of a Requirement for a Bachelor’s Degree in a Specific Specialty, or the Equivalent

The Petitioner has not clearly articulated the proffered position’s minimum entry requirements. It initially described that the holder of the position required “advanced training in both aviation and management.” It did not specifically explain what it meant by “advanced training” or clarify whether

“advanced training” was synonymous with any type of “degree,” or whether it could include “advanced training” gained from on-the-job experience (and, if so, how much). Upon receipt of the Director’s request for additional evidence (RFE), the Petitioner narrowed the position’s minimum requirement significantly, to a bachelor’s degree in aviation management. It did not explain the change.

As noted, the statute mandates that in order to qualify for classification as a specialty occupation, a proffered position must require a bachelor’s degree in a specific specialty, or the equivalent. Section 214(i)(1) of the Act. The Petitioner’s initial submission did not make that case, and we do not consider its attempt to narrow the minimum entry requirements in response to the RFE sufficient. A petitioner may not make material changes to a petition, to its claims, or to the evidence in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm’r 1998).

For this reason alone, the Petitioner has not met its burden and the petition cannot be approved. However, even if we were to set aside this deficiency, we would still deny the petition because it does not satisfy any of the regulatory specialty-occupation criteria contained at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).

B. The Regulatory Specialty-Occupation Criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4)

1. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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 consider the information contained in the U.S. Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* regarding the duties and educational requirements of the wide variety of occupations it addresses.

The *Handbook’s* subchapter “How to Become a Training and Development Manager” does not indicate that a bachelor’s degree in a specific specialty, or the equivalent, is normally required for entry into positions located within this occupational category. To the contrary, it specially states that these individuals “come from a wide variety of educational backgrounds.” While the *Handbook* recognizes that “a bachelor’s or master’s degree and related work experience” is needed in its initial summary, it goes on to acknowledge that “these workers commonly have a bachelor’s degree in business, communications, social science, or a related field.” Thus, while these positions may generally require a bachelor’s degree and some skills, the *Handbook* does not provide a basis for concluding that a bachelor’s degree in a specific specialty, or its equivalent, is a normal entry requirement for positions located within this occupational category.

It is problematic that in addition to recognizing degrees in disparate fields, the *Handbook* states that a degree in business or a “social science” is common. The First Circuit Court of Appeals explained in *Royal Siam*, 484 F.3d at 147, that:

The courts and the agency consistently have stated that, although a general-purpose bachelor’s degree, such as a business administration degree, may be a legitimate

prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.¹

Therefore, the *Handbook's* recognition that a general, non-specialty degree in business is sufficient for entry into the occupation strongly suggests that a bachelor's degree in a specific specialty is not a standard, minimum entry requirement for this occupation. That is, the *Handbook* does not describe the normal minimum educational requirement for the occupation in a categorical manner, other than

¹ *Id.* But see *India House, Inc. v. McAleenan*, 449 F. Supp. 3d 4, 2020 WL 1479519 (D.R.I. 2020). In *India House*, the court distinguished *Royal Siam* on factual grounds but did not dispute its central reasoning: that a position whose duties can be fulfilled by an individual with a general-purpose bachelor's degree in business administration is not a specialty occupation. Instead, it distinguished *Royal Siam* on factual grounds. Here, the Petitioner specifically recognizes an unspecialized bachelor's degree in business administration as being one of the many degrees it considers as providing an adequate preparation to perform the duties of the proffered position.

The agency has longstanding concerns regarding general-purpose bachelor's degrees in business, or business administration, with no additional specialization. For example, in *Matter of Ling*, 13 I. & N. Dec. 35 (Reg'l Comm'r 1968), the agency stated that attainment of a bachelor's degree in business administration alone was insufficient to qualify a foreign national as a member of the professions pursuant to section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). Twenty years later, the agency looked to the nature of the position itself and clarified that a requirement for a degree with a generalized title, such as business administration, without further specification, was insufficient to qualify the position as one that is professional pursuant to section 101(a)(32) of the Act. *Michael Hertz Assocs.*, 19 I&N Dec. at 560. *See also Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791 (Comm'r 1988) (vice president for manufacturing in a textile company was not a professional position because individual holding general degree in business administration, engineering or science could perform its duties).

Congress created the modern H-1B program as part of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978. In doing so, it pivoted away from the prior H-1 standard of whether a position was "professional." Instead, petitioners were now required to demonstrate that a proffered position qualified as a "specialty occupation." Section 101(a)(15)(H)(i)(b) of the Act. In the final rule setting forth the requirements for the revamped H-1B program, the agency, responding to commenters suggesting that the proposed regulatory "specific specialty" requirement "was too severe and would exclude certain occupations from classifications as specialty occupations," stated that "[t]he definition of specialty occupation contained in the statute contains this requirement." Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991).

The agency's concerns regarding a general-purpose, non-specific degree in business, or business administration, continued under the revamped H-1B program. *See, e.g., Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151 (D. Minn. 1999); *Royal Siam*, 484 F.3d at 147; *2233 Paradise Road, LLC v. Cissna*, No. 17-cv-01018-APG-VCF, 2018 WL 3312967 (D. Nev., July 3, 2018); *XiaoTong Liu v. Baran*, No. 18-00376-JVS, 2018 WL 7348851 (C.D. Cal., Dec. 21, 2018); *Parzenn Partners v. Baran*, No. 19-cv-11515-ADB, 2019 WL 6130678 (D. Mass., Nov. 19, 2019); *Xpress Group v. Cuccinelli*, No. 3:20-CV-00568-DSC, 2022 WL 433482 (W.D.N.C. Feb. 10, 2022).

To the extent the Petitioner is arguing that a bachelor's degree in business, or business administration, with no further specialization (or the equivalent), *is* a bachelor's degree in a specific specialty, then consistent with agency history and federal case law, we must disagree.

recognizing that these occupations generally require a degree, which does not satisfy the plain and unambiguous language of the statute.

On appeal, the Petitioner argues that the U.S. Court of Appeals for the Ninth Circuit’s decision in *Innova Solutions, Inc. v. Baran*, 983 F.3d 428 (9th Cir. 2020) (*Innova*) supports granting the petition because the *Innova* court looked at the *Handbook*’s entry for computer programmers and found the entry sufficient to satisfy this first criterion. However, that decision is distinguishable from the case at hand for several reasons. First, the *Innova* decision dealt with the computer programmer occupation, not a training and development manager. Second, the *Innova* court found that the *Handbook*’s reference to the computer programmer’s position “typically” requiring a bachelor’s degree was sufficient to find that the position “normally” required a degree in a specific specialty as required by 8 C.F.R. § 214.2(h)(4)(ii)(I). However, the *Handbook*’s entry for computer programmers notes fields that are highly correlated such as computer and information technology and mathematics, whereas the *Handbook*’s entry for training and development managers lists several disparate fields. Most importantly, the *Handbook*’s entry for computer programmers makes no mention of general-purpose degrees such as degrees in business or social sciences. We therefore disagree that the *Innova* decision is relevant here.

For the foregoing reasons, the *Handbook* is insufficient to establish that a training and development manager normally requires at least a bachelor’s degree in a specific specialty or its equivalent for entry into the occupation, and it does not support the proffered position here as being a specialty occupation under criterion one. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

2. Second Criterion

The second criterion presents two, alternative prongs: “[t]he 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 contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.²

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations. We generally consider the following sources of evidence to determine if there is such a common degree requirement: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry establish that such firms “routinely employ and recruit only degreed individuals.”³

² We will discuss the second prong of the second criterion in section 4 below.

³ See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989) (considering these “factors” to inform the commonality of a degree requirement)).

For the reasons stated above, the Petitioner has not established that the proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter.

On appeal, the Petitioner argues that the Director ignored an expert opinion letter that establishes the industry standard for this position and thus satisfies its burden of establishing the position is a specialty occupation under this prong. We acknowledge that the Director's decision does not discuss the expert opinion, however, upon *de novo* review, we do not find the letter sufficient to establish an industry standard because it does not address industry standards. Instead, to form his opinion, the Petitioner's expert reviewed the Beneficiary's academic credentials and resume, and the Petitioner's letter of support. The letter was not based on a review of industry publications but instead centered on the Beneficiary's qualifications for the position. Thus, the letter does not satisfy this criterion.

The Petitioner also provided summaries of positions held by the Beneficiary such as "CFI Trainer - Standardization Team," "Training Manager - International Team," "Certified Flight Instructor," "Certified Flight Instructor" in Oregon, "CFI Trainer - Standardization Team," and "Training Manager." These descriptions show the duties of each position but do not mention their educational requirements, and there are too few to establish an industry standard.

Accordingly, the Petitioner has not provided sufficient probative evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations and therefore, has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

3. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to demonstrate that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. Evidence provided in this criterion may include, but is not limited to, an organizational chart showing the Petitioner's hierarchy and staffing levels with corresponding and experience requirements for this position, as well as documentary evidence of past employment practices for the position.

The Petitioner does not provide any evidence to establish eligibility for the petition under this ground. Accordingly, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

4. Second Prong of the Second Criterion and Fourth Criterion

The second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is satisfied if a petitioner establishes 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. 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.

On appeal, the Petitioner argues that the Director did not consider evidence to establish that the position's duties are so complex, unique, and/or specialized that it qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The Petitioner argues that the position, whose duties are described above, is complex, unique, and specialized because the aviation training school is an FAA regulated industry. We do not disagree that it can be useful to view a position within the context of its industry. However, we observe that the Petitioner designated this particular position at a Level I wage, which would seem to undermine its argument that the position is more complex, unique and/or specialized than typical training and development manager positions. While certainly not dispositive of the specialty-occupation issue, a position's wage-level is not irrelevant, either.

Furthermore, many of the position's duties are described in ordinary terms. For instance, "evaluate the effectiveness of training programs and instructors," "evaluate his staff," "plan, coordinate, and direct skills and knowledge-enhancement programs for company staff and students," and "assess employee needs for training and oversee training and development of staff" are vaguely-described and do not establish relative specialization, or denote relative complexity or uniqueness. Moreover, because the Petitioner did not provide a percentage breakdown of each duty, it is unclear how much time the position devotes to each duty, which creates ambiguity about the substantive nature of the position. The Petitioner's lack of detail and information provided to establish the position's essential duties and how much time is devoted to each duty means there is insufficient evidence to establish eligibility under both 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

We acknowledge that on appeal, the Petitioner correctly identifies deficiencies in the Director's decision, including typos and a lack of analysis of the evidence submitted. These deficiencies however do not establish a sufficient basis to remand or sustain this appeal. Upon *de novo* review of the petition and the submitted evidence, and in light of all the above, the Petitioner has not established the position's relative specialization and complexity or uniqueness, and did not identify any tasks that are so specialized and complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative 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).

IV. CONCLUSION

As set forth above, we conclude that the evidence of record does not establish, more likely than not, that the proffered position qualifies for classification as a specialty occupation. Accordingly, 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 under section 214(i)(1) of the act or under any of the four criteria found in 8 C.F.R. § 214.2(h)(4)(iii)(A).

ORDER: The appeal is dismissed.