



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 19713835

Date: MAR. 7, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a software technology company, seeks to temporarily employ the Beneficiary as a “QA lead” under the H-1B nonimmigrant classification for specialty occupations. 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 Nebraska Service Center denied the petition, concluding that the record 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.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit 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. 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)(I) of the Act, 8 U.S.C. § 1184(i)(I), 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

The Petitioner stated that the Beneficiary will be employed as a “QA lead” and that the position requires a minimum of a bachelor’s degree in computer science, computer engineering, electrical engineering, or a related field or its equivalent. The Petitioner initially provided a list of duties, which was updated with more detail with their request for evidence (RFE) response. While we will not list each duty here, we have reviewed and considered each one. Upon review of the record in its totality and for the reasons set out below, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not include sufficient consistent, probative evidence establishing 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)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for

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.

entry into the particular position. We recognize the U.S. Department of Labor’s (DOL) Occupational Outlook Handbook (Handbook) as a useful source of information regarding the duties and educational requirements of the wide variety of occupations that it addresses. The Petitioner designated the proffered position on the labor condition application (LCA) as a detailed Occupational Information Network (O*NET) Standard Occupation Classification (SOC) code 15-1199.09 “Information Technology Project Managers” under the SOC occupation 15-1199 “Computer Occupations, All Other” occupation.²

The Handbook is a career resource offering information on hundreds of occupations. However, there are occupational categories which the Handbook does not cover in detail, and instead provides only summary data.³ The subchapter of the Handbook titled “Data for Occupations Not Covered in Detail” states, in relevant part, that the “[t]ypical entry-level education” for a variety of occupations within the category of “[c]omputer occupations, all other” is a “[b]achelor’s degree,” without indicating that the bachelor’s degree must be in a specific specialty. Thus, the Handbook is not probative in establishing that these positions comprise an occupational group for which the normal minimum requirement for entry is at least a bachelor’s degree in a specific specialty, or its equivalent.

Next, the Petitioner argues O*NET demonstrates that positions located within this occupation are specialty occupation positions, because the occupation’s job zone and required education suggests a bachelor’s degree is normal. Contrary to the assertion of the Petitioner, O*NET does not state a requirement for a bachelor’s degree for this occupation. Rather, it assigns this occupation a job zone “four” rating, which groups it among occupations for which “most . . . require a four-year bachelor’s degree, but some do not.” See https://www.onetonline.org/Archive_ONET-SOC_2010_Taxonomy_09_2020/link/summary/15-1199.09 (last visited Mar. 7, 2022). Even if O*NET stated that a bachelor’s degree is required to enter positions located within SOC 15-1199.09, “Information Technology Project Managers” (which it does not), O*NET does not describe the normal minimum educational requirements with sufficient specificity to establish that the positions falling within the occupational category are specialized. The O*NET Summary Report for SOC 15-1199.09, “Information Technology Project Managers” includes general information about the occupation. For example, O*NET includes specialized vocational preparation (SVP), job zone, education, and the knowledge or skills generally associated with the occupation. However, O*NET does not specify particular fields of study when discussing the type of preparation or degrees that might be needed to perform a particular occupation. Accordingly, O*NET does not establish that a bachelor’s degree in a specific specialty, or the equivalent, is normally required. It does not satisfy the first criterion.

The Petitioner also argues that the first regulatory criterion does not restrict “specific specialty” to at least a bachelor’s in a single specific degree program, and cites to a district court case, *Raj and Co. v.*

² O*NET Online updated the occupation code of SOC 15-1199.09, Information Technology Project Managers to SOC 15-1299.09 on November 17, 2020. For the purposes of this decision, we will refer to the occupation to the code and name at the time of the Director’s decision, SOC 15-1199.09, Information Technology Project Managers. See https://www.onetonline.org/Archive_ONET-SOC_2010_Taxonomy_09_2020/link/summary/15-1199.09 (last visited Mar. 7, 2022).

³ Bureau of Labor Statistics, U.S. Dep’t of Labor, Occupational Outlook Handbook, Data for Occupations Not Covered in Detail (Sep. 8, 2021), <https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm>. Here, the Handbook does not provide specific information for various occupations which might be classified within the occupational category.

USCIS, 85 F. Supp. 3d 1241 (W.D. Wash. 2015). While we agree with the Petitioner that the regulatory provisions do not restrict qualifying occupations to a single, specifically tailored and titled degree program, that is not the issue. The issue is that neither the Handbook nor O*NET discuss the type of preparation or degrees that might be needed to perform the duties of positions in this occupation, SOC 15-1199.09, “Information Technology Project Managers,” and therefore, neither can be used to establish that a bachelor’s degree in a specific specialty, or the equivalent, is normally required to satisfy the first criterion.

The Petitioner also cites *Next Generation Tech., Inc. v. Johnson* as relevant here and uses it to support a conclusion concerning the meaning of what is “normally” the minimum requirement for the position. *Next Generation Tech., Inc. v. Johnson*, 328 F. Supp. 3d 252 (S.D.N.Y. 2017). We question the applicability of *Next Generation Tech., Inc.* in the instant matter, as it analyzed our reading of the Handbook concerning the entry requirements for positions located within a different and separate occupational category of “Computer Programmers.” Moreover, while the Handbook may establish the first regulatory criterion for certain professions,⁴ many occupations are not described in such a manner. As just discussed, neither the Handbook nor O*NET include information regarding this occupation conclude that the occupation is a specialty occupation.

As the foregoing demonstrates, the Petitioner has not provided sufficient documentation from a probative source to substantiate its assertion regarding the normal minimum requirement for entry into this particular position. Thus, 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 contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.⁵

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.”⁶

⁴ Such professions would include surgeons or attorneys, which indisputably require at least a bachelor’s degree for entry into the occupation.

⁵ We will discuss the second prong of the second criterion in section D below.

⁶ 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)).

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

The Petitioner argues that the four job postings submitted in response to the Director's RFE confirm that the Petitioner's degree requirements are similar to those normally required in their industry, software. Specifically, the Petitioner argues the job postings were placed by software companies and their duties parallel those of the proffered position. On appeal, the Petitioner submits additional information to demonstrate the companies placing the job postings conduct business in the software industry.

To be relevant for consideration under this prong, the descriptions on the job postings must describe positions that are parallel to the proffered position and the job postings must have been placed by organizations that (1) conduct business in the Petitioner's industry and (2) are also "similar" to the Petitioner. Absent such evidence, job postings submitted by the Petitioner are generally outside the scope of consideration for this prong, which encompasses only organizations that are similar to the Petitioner.

Although the Petitioner and the companies may perform some similar services, they do not appear similar to the Petitioner. The Petitioner indicates they have over 2,000 employees in the United States. However, the documents submitted with the job postings show all four of the companies have an approximate workforce of 51 to 200 individuals. Moreover, even if these companies were similar organizations within the same industry, we would still conclude the Petitioner has not established that the positions on the job postings are parallel to the proffered position.

Our review of the job postings confirms that these positions are different from, and not "parallel" to, the Petitioner's position." For example, the proffered position's duties include leading a project quality assurance (QA) team. However, two of the job postings' duties do not include leading a team. We also note some of these positions have entry requirements that differ from those of the Petitioner's position. The proffered position requires no experience; however, two job postings require at least seven years and another posting requires five years of experience. Also, one job posting only requires a general bachelor's degree and not a degree in a specific specialty. As such, these job postings do not advertise a "parallel position" to the proffered position.

Even if all of the job descriptions and requirements on the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), we would still be compelled to observe that the Petitioner does not demonstrate what statistically valid inferences, if any, can be drawn from the job postings with regard to the common educational requirements for entry into parallel positions in similar organizations.⁷ Moreover, given that there is no indication that the advertisements were randomly selected, the validity

⁷ See generally Earl Babbie, *The Practice of Social Research* 186-228 (7th ed. 1995).

of any such inferences could not be accurately determined even if the sampling unit were sufficiently large.⁸

As such, 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. Thus, the Petitioner has not satisfied the first 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. 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.

On appeal, the Petitioner asserts their requirement of at least a bachelor's degree in computer science, computer engineering, electrical engineering or a related field, or its equivalent is normal and minimally required for entry into the proffered position and similar positions within its organization. In support of this criterion, the Petitioner submitted an organizational chart that lists the names and title of six people, including the Beneficiary, and four of their resumes. First, none of the other individuals hold the same title as the Beneficiary, "QA lead."⁹ The record does not include any job duties performed by these employees, or the job advertisements for their positions. Therefore, we do not know what the recruitment process for hiring these individuals involved or whether specialized degrees were prerequisites. As such, the record contains insufficient evidence that these individuals have or had the same or similar substantive responsibilities, duties, and performance requirements as the proffered position. In addition, the Petitioner has not provided the total number of people it has employed in the past to serve in the proffered position, nor has it provided information about its past hiring history for the proffered position. Therefore, the Petitioner has not demonstrated that it normally requires a bachelor's degree in the specific specialty for the proffered position.

Even if the Petitioner always requires a bachelor's degree in a specific specialty to perform the duties of the proffered position, the record must still 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 v. Meissner*, 201 F.3d at 387-88. The Petitioner in this matter has not persuasively established that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position proffered here. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

⁸ See *id.* at 195-96 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

⁹ We also question the accuracy of the information of the submitted documents, because the job titles on the resumes appear to conflict with the titles listed on the organizational chart.

D. 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 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. 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.¹⁰

Upon review of the totality of the record, we conclude that the Petitioner has not sufficiently explained or documented why the duties are so “complex or unique” and “specialized and complex” unique that a bachelor's degree in a specific specialty is required. When determining whether a position is a specialty occupation, we look at whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. The Petitioner's initial list of job duties were expanded in their RFE response by providing the tools and technologies for one of the duties and the percentage of time the Beneficiary would devote to each tasks. Although the Petitioner provided more details to the duties, the Petitioner fails to sufficiently establish how these duties require specialized knowledge.

The record does not contain a sufficiently detailed description of the Beneficiary's duties to establish that the position requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent. For example, the Petitioner stated that the Beneficiary's duties include “[l]ead the project QA team”; “[e]nsure to deliver projects on time and with high quality”; “[a]ssess project scope (before and during requirements gathering) and create or refine detailed level-of-effort estimates”; and “[s]ync up with project team on a regular basis to discuss the quality issues and progress.” However, the general description of the duties does not illuminate the substantive application of knowledge involved or any particular educational requirement associated with leading the team or delivering and assessing the project. As most of the duties appear general, the proffered position's duties do not demonstrate how they are “complex or unique” and “specialized and complex.” As such, the Petitioner does not establish that the job duties it describes requires the theoretical and practical application of a body of highly specialized knowledge.

The duties and description also feature use of tools for which the Petitioner has not explained why skills using such technologies could not be gained through certifications in these technologies, through a vocational (associate's) degree, or a computer bootcamp. For example, the Petitioner states that the Beneficiary would work on “[e]nterprise level Salesforce implementations” and uses “[redacted] cloud management center (CMC), Application life Cycle management (ALM) and Azure Devops (ADO).” However, the Petitioner makes little effort to explain how use of these technologies makes the position “specialized and complex” or “complex or unique” or requires a bachelor's degree in computer science, computer engineering, information technology, or a related field.

¹⁰ The Petitioner does not challenge the fourth criterion on appeal, but states that proffered position meets all of the criterion. We have briefly addressed elements of the fourth criterion in this section.

We now turn to the position evaluation provided by [redacted] of [redacted] University. In his letter [redacted] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; and (2) states the position is complex unique and can only be done by an individual with a bachelor's degree in computer science, computer engineering, electrical engineering, or a related field. Specifically, the professor argues 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, any of 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, computer engineering, electrical engineering, or a related technical field.

However, [redacted]'s 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 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.¹¹ 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.

Moreover, the professor opines that the duties of the Petitioner's position are so complex and unique that "only a candidate who has attained at least a Bachelor's degree in Computer Science, Computer Engineering, Electrical Engineering, or its equivalent" can fulfill the proffered position's responsibilities. However, 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.

In light of all the above, the Petitioner did not sufficiently develop relative specialization and complexity or uniqueness as an aspect of the duties of the position, and it 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).

Because the Petitioner has not satisfied 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. Moreover, the record does not establish that the Petitioner satisfied the statutory and regulatory definitions of specialty occupation.

¹¹ Association for Computing Machinery, 2013 Curriculum Guidelines for Undergraduate Programs in Computer Science https://www.acm.org/binaries/content/assets/education/cs2013_web_final.pdf.

III. 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.

ORDER: The appeal is dismissed.