



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

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

In Re: 21549831

Date: MAY 12, 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 Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner did not establish that the Beneficiary was qualified for the offered position. The matter is now before us on appeal. 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 sustain the appeal.

I. LEGAL FRAMEWORK

The statutory and regulatory framework that we must apply in our consideration of the evidence of the Beneficiary's qualification to serve in a specialty occupation follows below.

Section 214(i)(1)(B) mandates that a specialty occupation requires "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."¹ Furthermore, section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an individual applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or

¹ We generally acknowledge that the core essence of this provision is the knowledge one attains in a specialty area, rather than a title various institutions might assign to a particular degree.

- (C)(i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that a beneficiary must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the Petitioner must satisfy at least one of the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D), which states:

Equivalence to completion of a college degree. For purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSIS);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;²
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

² The term "recognized authority" means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. 8 C.F.R. § 214.2(h)(4)(ii). A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. *Id.*

By its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for U.S. Citizenship and Immigration Services (USCIS) application and determination, and that, also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceedings establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), including, but not limited to, a type of recognition of expertise in the specialty occupation.

II. ANALYSIS

On the petition, the Petitioner stated that the Beneficiary will serve as a “Developer I, ETL.” The Petitioner stated that the position requires a bachelor’s degree in “Computer Science, Mathematics, or a related field (or its equivalent).” When responding to the Director’s request for evidence (RFE), the Petitioner further stated that the candidate must have a foundational knowledge in the quantitative disciplines of computer science and related principles.

Within the initial filing, the Petitioner indicated that the Beneficiary was qualified to serve in the position because she possessed the minimum required education in the form of a Master of Science degree in chemical and biochemical engineering from a U.S. institution of higher education and a foreign bachelor’s degree in applied chemistry. When responding to the RFE, the Petitioner further indicated that she has progressive experience within the field of data and computer science. The Beneficiary earned a bachelor of engineering in applied science from [redacted] University of Technology in China. In the United States, she earned a Master of Science in Chemical and Biochemical Engineering from [redacted]. She also completed coursework relating to databases and cloud computing from [redacted] University. The Beneficiary gained experience related to the specialty working for two organizations from April of 2018 until the Petitioner filed the petition in August of 2021.

The first experience letter reflected that the Beneficiary gathered key data from social media to develop marketing strategies for the organization, developed a dashboard and analytics to provide management with business insight, and automated the monitoring and evaluation of data to measure performance as it related to goals and benchmarks. According to the second experience letter, the Beneficiary made performance improvements and efficiencies on large scale platforms, performed data analysis and data integration through the data pipeline and in the database environment, automated efficiencies in the database environment, and improved workflow among other related duties on several projects.

The Petitioner submitted an evaluation of the Beneficiary’s credentials to support their eligibility claims. A review of the evaluator’s qualifications to opine demonstrates that he satisfies the regulatory requirements for such assessments at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). As it relates to the Beneficiary’s qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the evaluator concluded that based on the Beneficiary’s foreign and domestic education when combined with more than three years of work experience in progressively responsible positions directly related to the specialty (i.e., “recognition of expertise” from a credit-granting, college-level evaluating official), that she possessed the equivalent of a U.S. Bachelor of Science in Data Science from an accredited institution of higher learning in the United States.

The Director denied the petition concluding the Petitioner did not demonstrate that the Beneficiary was qualified to occupy the offered position because the record did not establish that they satisfied

any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1)–(4). Specifically, the Director determined that the evidence was not sufficient to satisfy the regulatory requirements under 8 C.F.R. § 214.2(h)(4)(iii)(D). Reviewing the Director’s decision, it appears that they conflated the regulatory requirements for two methods of evaluating the Beneficiary’s qualifications. The method the Petitioner requested was via a credentials evaluation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), (D)(1).

We recap the Director’s analysis for clarity. The Director first concluded that the Beneficiary did not possess sufficient college-level studies, which meant she would require 12 years of qualifying experience that also fulfills the criteria outlined in the regulations as to progressively responsible work experience and other requirements. The Director then noted that the experience letters detailed three years of work, but stated the following:

[T]he letters do not show that the beneficiary’s work experience was progressively responsible work experience; whether the beneficiary’s training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; and whether the beneficiary’s experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

We note that aside from the progressively responsible experience element, the remainder of these requirements are only found under a USCIS determination and not under a credentials evaluation, and the Petitioner only asserted that they qualified under the credentials evaluation method found at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The Director subsequently discussed the credentials evaluation and noted its conclusions, but did not offer any analysis on the evaluator’s findings. The Director then returned to the USCIS determination method—although without citing to it—noting the need for the Petitioner to demonstrate the Beneficiary has three years of experience for each year the Beneficiary lacks. The Director then concluded that she has not acquired the equivalency to a bachelor’s degree in data science or in a closely related field. The Director subsequently cited to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and stated the Petitioner did not show that the Beneficiary was qualified to perform the offered position’s duties.

On appeal, the Petitioner contests the Director’s methodology in the denial. The Petitioner notes they are permitted to combine the Beneficiary’s education and work experience as described in the regulation. Although the Petitioner discusses the Beneficiary’s current efforts to earn a Master of Information Technology, they may only rely on the Beneficiary’s achievements as of the date they filed the petition so we will not consider those arguments. 8 C.F.R. § 103.2(b)(1). The Petitioner discusses the relationship between a bachelor’s in computer science and data science as outlined in the credentials evaluation and reiterates that her work experience was achieved in progressively responsible positions and that those positions directly relate to the specialty in the offered position.

It does not appear that the Director employed the correct analysis in their denial decision. First, the Director should have offered analysis relating to the credentials evaluation to determine whether it satisfies the regulatory requirements. That would include the requirements under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1):

- Does the author have the authority to grant college credits;
- Can the author grant those credits in the specialty area based on life or work experiences;
- Does the author have that authority at an accredited U.S. college or university; and
- Does that accredited U.S. college or university have a program for granting college credits based on life or work experiences?

We reviewed the documents within the RFE response, and we conclude that each of these elements have been satisfied. Next, the Director should have discussed why they decided that the evaluator did not demonstrate that the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) were met. The evaluator determined that the Beneficiary's foreign education was equivalent to a Bachelor of Science in Applied Chemistry from an accredited U.S. institution. He further concluded that her work history was progressively responsible and totaled more than three years of experience. The evaluator combined the Beneficiary's education and work experience in his determination that she had attained the equivalent of a U.S. Bachelor of Science in Data Science from an accredited institution of higher learning in the United States. The Director did not offer analysis to support their conclusion that the credentials evaluation was insufficient.

We conclude that the credentials evaluation is sufficient to satisfy the beneficiary qualifications regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), and that the Petitioner has demonstrated the Beneficiary is qualified to perform in the offered position.

ORDER: The appeal is sustained.