



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

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

In Re: 24445336

Date: FEB 10, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner seeks to temporarily 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 Director of the Vermont Service Center denied the petition, concluding that the record did not establish that the proffered position qualifies as a specialty occupation. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

The Act at Section 214(i)(1), 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires: (A) the 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) is a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) adds a non-exhaustive list of fields of endeavor to the statutory definition. And the regulation at 8 C.F.R. § 214.2(h)(4)(iii) requires that the proffered position must also 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.

The statute and the regulations must be read together to make sure that the proffered position meets the definition of a specialty occupation. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statue as a whole is preferred); *see also COIT Independence Joint Venture v. Fed. Sav. And Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). Considering the statute and the regulations separately leads to scenarios where a Petitioner satisfies a regulatory factor but not the definition of specialty occupation contained in the statute. *See Defensor v. Meissner*, 201 F.3d 384, 387 5th Cir. 2000). The regulatory criteria read together with the statute gives effect to the statutory intent. *See Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act*, 56 Fed. Reg. 61111, 61112 Dec. 2, 1991).

So we construe the term “degree” in 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position supporting the statutory definition of specialty occupation. *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”). USCIS’ application of this standard has resulted in the orderly approval of H-1B petitions for engineers, accountants, information technology professionals and other occupations, commensurate with what Congress intended when it created the H-1B category.

And job title or broad occupational category alone does not determine whether a particular job is a specialty occupation under the regulations and statute. The nature of the Petitioner’s business operations along with the specific duties of the proffered job are also considered. We must evaluate the employment of the individual and determine whether the position qualifies as a specialty occupation. *See Defensor*, 201 F.3d 384. So a Petitioner’s self-imposed requirements are not as critical as whether the position the Petitioner offers requires the application of a theoretical and practical body of knowledge gained after earning the required baccalaureate or higher degree in the specific specialty required to accomplish the duties of the job.

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. THE PROFFERED POSITION

The Petitioner is offering the Beneficiary the position of Associate – Controls Advisory – IT – RC&C – IT Risk. The petition included a certified labor condition application (LCA) certified for a position located within the “Risk Management Specialists” occupational category corresponding to the Standard Occupational Classification code 13-2099.02. The proffered job description aligns with the duties of the “Risk Management Specialists” occupational category.¹

The Petitioner stated in its support letter that the Associate – Controls Advisory – IT – RC&C – IT Risk position requires a bachelor’s degree in accounting, finance, economics, business analytics, business administration, or related field, or the foreign degree equivalent. In its response to the Director’s request for additional evidence (RFE), the Petitioner submitted an expert position evaluation and a brief in support to establish that the proffered position met all four of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).²

III. ANALYSIS

The proffered position does not meet the statutory or regulatory definition of the term “specialty occupation.” The Petitioner has not satisfied the requirement that the proffered position require the theoretical and practical application of a body of specialized knowledge and that the position requires attainment of a bachelor’s degree in the specific specialty to perform the job duties.

The record of proceedings contains the Petitioner’s stated requirements for the proffered position. The Petitioner states that they accept among numerous other degrees a bachelor’s degree in business administration, with no further specialization, as a minimum qualification for entry into the proffered position. If a position is a “specialty occupation” under the statute and regulations, it is one which involves a “body of highly specialized knowledge” attained after completing a bachelor’s degree or higher in a “specific specialty.” A general degree requirement like a bachelor’s degree in business administration, standing alone without any further specialization, is not a specialty. And this excludes any proffered position accepting such a degree as a minimum requirement for entry into the position from consideration as a specialty occupation. A bachelor’s degree in business administration without further specialization is so broad that it could apply to a position in finance as well as general business operations and management in a variety of endeavors. So it cannot provide an individual with the “body of highly specialized knowledge” required to perform the duties of a specialty occupation.

In accordance with the statutory and regulatory requirements, the agency has consistently disfavored general purpose bachelor’s degree in business administration with no additional specialization. *See Matter of Ling*, 13 I&N Dec. 35 (Reg’l Comm’r 1968); *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm’r 1988); *Matter of Caron Int’l*, 19 I&N Dec. 791 (Comm’r 1988). Even after Congress revamped the H-1B program as part of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat.

¹ Subsequent to the filing of the petition, the Department of Labor’s Bureau of Labor Statistics advised that the Risk Management Specialists entry at 13-2099.02 had been discontinued and to use the Financial Risk Specialists entry at 13-2054. The Petitioner’s proffered job description aligns with the new category.

² The Petitioner also submitted documentation in support of the H-1B petition, RFE and appeal including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

4978, the agency's concerns with a general-purpose bachelor's degree in business administration with no additional specialization continued. *See e.g. Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151 (D. Minn. 1999); *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).

As the First Circuit Court of Appeals explained in *Royal Siam*, 484 F.3d at 147:

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 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.

A bachelor's degree in business administration with no further specialization is not a degree in a specific specialty. And the fact that the Petitioner would accept such a degree as a minimum qualification for entry to the proffered position does not satisfy the statutory and regulatory definitions of specialty occupation. On that basis alone, we could dismiss the appeal without any further discussion.

But the record of proceedings reflects that along with a bachelor's degree in business administration with no further specialization, the Petitioner would also accept other varied bachelor's degrees in accounting, finance, economics, and business analytics for entry into the proffered job. Even if we were to leave to the side the dispositive issue of the Petitioner's acceptance of a business administration degree with no further specialization, we would still conclude that the Petitioner's acceptance of a bachelor's degree from the wide variety of fields it specifies precludes the Petitioner from satisfying both the statutory and regulatory definition of specialty occupation.

On appeal, the Petitioner contends that the Director applied an incorrect legal standard when they denied the petition because caselaw in *Residential Finance Corporation v. U.S. Citizenship & Immigration Servs.*, 839 F.Supp.2d 985 (S.D. Ohio 2012) and *Relx v. Baran*, 397 F.Supp.3d 41 (D.D.C. 2019), supports a conclusion that their wide range of degrees can constitute a specialty required to perform the duties of a specialty occupation. The Petitioner's arguments are not persuasive.

There is no requirement in the statute for the required education to consist of one specific degree or major. But there must be a close relation between the required specialized studies to constitute a common "specialty" and that "specialty" must be related to the duties of the position as supported by the case law cited by the Petitioner in their appeal. When a petitioner would accept a bachelor's degree

from a wide variety of seemingly unconnected fields, it cannot establish that the fields constitute a “specialty” if they do not establish how each accepted and specific field of study is directly related to each another and to the duties and responsibilities of the particular position.

We interpret the statutory “the” and the regulatory “a” to mean a singular specialty. But we do not so narrowly interpret the statute and regulation such that multiple closely related fields of study would not constitute a specialty to perform the duties of a related specialty occupation. In general, 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 provided the specialties are closely related such that they constitute a common specialty required to perform the duties of the position. If they constitute a common specialty, then the required “body of highly specialized knowledge” would essentially be the same. If the required degree fields do not constitute a common specialty, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be “in the specific specialty (or its equivalent).” A minimum entry requirement that did include disparate fields of study, such as philosophy and engineering for example, would require the Petitioner to establish how each field is directly related to all of the duties and responsibilities of the particular position. Section 214(i)(1)(B) of the Act (emphasis added).

The courts in *Residential Finance* and *Relx* were considering whether the statute required that only one specific degree be accepted for a position to be specialized. Neither stands for the proposition that a wide variety of degrees can constitute a specialty required to perform the duties of a specialty occupation. Quite the opposite, *Residential Finance* found for the Plaintiff only after determining that the Plaintiff had established their minimum requirements capture the necessity of a baccalaureate degree in a specialized course of study in a field related to the proffered job’s duties as a minimum. *Residential Finance Corporation*, 839 F.Supp.2d at 996. In *Relx*, the court determined that a specialty occupation existed only after determining that the occupation required a specialized course of study the plaintiff had earned. *Relx*, 397 F.Supp.3d at 55.

The Petitioner further argues on appeal that caselaw in *CARE v. Nielsen*, 461 F. Supp.3d 1289 (N.D. Ga. 2020) and in the unreported case *3Q Digital, Inc., v. U.S. Citizenship and Immigration Services*, No. 19-CV-579, 2020 WL 1079068 (D.D.C. Mar. 6, 2020) states that most occupations in the proffered job’s occupational classification require a bachelor’s degree as a minimum educational requirement for entry. However, the court in *CARE* confirmed that the statute and regulation must be read together to require a baccalaureate or higher education in a specific specialty. *CARE*, 461 F. Supp.3d at 1304. Even the unreported case cited by the Petitioner still requires that there be a relevant connection between the field of study and the demands of the position. *3Q Digital, Inc.*, 2020 WL 1079068 at *7-8.³

The Petitioner’s RFE response relies heavily on an analysis of positional requirements (evaluation) to argue that the range of fields it requires for the position is not disparate, and that the fields constitute a specialty closely related together and with the duties of the position. The writer of the evaluation formulated their opinion based on their knowledge of the wider field of financial management and

³ Regardless, we are not bound to follow the unpublished decision of a United States district court. See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993).

quantitative financial operations gained as a professor of finance, accounting, and taxation at [] College in [] New York. The writer teaches courses in finance, accounting, taxation, and related subjects. They also noted other professional experience and certifications. The writer states that they reviewed documentation in the form of a letter from the Petitioner outlining the job duties of the position and the required educational background in combination with a clarifying supplement including percentages of time spent on each duty. The writer also refers to their individual research and experience in the fields of accounting, finance, and auditing. The writer lists the proffered job duties, the academic prerequisites of the proffered job, and attempts to establish the suitability of each required field of study to a selected portion of the proffered job's overall duties. The evaluation also tries to tie in a bachelor's degree in business administration without specialization to the duties of the position and to the other accepted fields of study, concluding that the proffered position fits within the statute and regulations as a "specialty occupation."

As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). But an opinion statement has less weight where there is cause to question or doubt the opinion, or if it is not in accord with other information in the record. The submission of expert opinion letters is not presumptive evidence in any event. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA, 2008).

We have questions about the sufficiency of the writer's opinion because its conclusions are not in accord with information in the record. The writer references their research regarding the issues they discuss in their opinion but does not provide this research in the record along with their opinion to bolster their conclusions. The writer also refers to their evaluation of professional positions of employment that they relied on in forming their opinion. However, it is unclear from the record what positions were evaluated by the writer in making their opinion and whether the evaluated positions correspond to the proffered position. The evaluation is based on unspecified research authority and position evaluations not present or described in the record of proceedings. Even if we put aside our doubts about the basis for the writer's opinions, the writer's conclusions of each degree field's applicability to the proffered job duties are selectively applied only to a small portion of the overall job duties. The record does not support how each acceptable field of study is directly related to all the duties and responsibilities of the proffered job.

The Petitioner's reliance on this evaluation to support its argument that the range of fields of study it accepts is closely related is misplaced. The evaluation does not provide a strong enough basis to understand how the wide range of degrees accepted by the Petitioner are related to one another to form a body of specialized knowledge. Nor does it show how that body of specialized knowledge relates to the duties of the proffered job.⁴ So the evaluation is not probative and we decline to assign it any significant evidentiary weight.

We therefore cannot conclude that the proffered position's minimum requirement for entry into the job is anything more than a general bachelor's degree. The Petitioner has not satisfied the statutory definition of a "specialty occupation" at section 214(i)(1)(B) of the Act nor the regulatory definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(ii).

⁴ And even if it did, the Petitioner would still be left with the deficiencies discussed earlier that are inherent to a petition in which a bachelor's degree in business administration, with no further specialization, is acceptable.

Without the express requirement of a baccalaureate or higher degree providing the theoretical and practical application of a body of highly specialized knowledge, the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4) cannot be satisfied. The supplemental regulatory criteria are read together within the related regulations and the statute as a whole. So, where the regulations refer to the term “degree,” we interpret that term to mean a baccalaureate or higher degree in a specific specialty related to the proffered position. *See Royal Siam*, 484 F.3d at 147. The word “degree” is mentioned in each prong of the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4). And where, as here, a baccalaureate or higher degree in a specific specialty is not required as a minimum requirement of entry, it follows that each prong under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4) remains unsatisfied. So we will not consider the Petitioner’s arguments and the evidence it submits in support of its contention that it satisfies the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4).

We conclude that the proffered position here is not a specialty occupation because the Petitioner’s stated range of acceptable degree fields is too broad to constitute a single specialty required to accomplish the duties of proffered job. The record of proceedings does not establish that the proffered position requires both: (1) the theoretical and practical application of a body of highly specialized knowledge; and (2) the attainment of a bachelor’s degree in the specific specialty. The Petitioner has satisfied neither the statutory definition of a “specialty occupation” at section 214(i)(1)(B) of the Act nor the regulatory definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(ii). As the Petitioner had not satisfied that threshold requirement, it cannot satisfy any of the supplemental specialty-occupation criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4). The Petitioner has not established that the proffered position is a specialty occupation.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.