



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

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

In Re: 23475042

Date: JAN. 18, 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 as a business analyst (management consultant) 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, and that the Beneficiary is qualified to perform services in a specialty occupation. On appeal, the Petitioner submits a brief and contends that the petition should be approved.

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 sustain the appeal.

The record of proceeding establishes by a preponderance of the evidence that the proffered position requires an individual with a bachelor's degree in biology or a related field. In particular, we find compelling the advisory opinion dated February 2022, as well as the Petitioner's own March 2022 letter. Those letters explained persuasively what the Beneficiary would do while working for the Petitioner and its clients, and why a bachelor's degree in biology or a related field is required to perform those duties.<sup>1</sup> When reviewed within the context of the Petitioner's business operations, we

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<sup>1</sup> Counsel seems to undermine this assertion on appeal by indicating that the Petitioner would actually accept a bachelor's degree from a much larger range of fields for this position, as long as the degree could be described as having come from a "quantitative and analytical" field.

We agree with Counsel that it is possible for a petitioner to accept multiple degree-fields and still have a proffered position be classified as a specialty occupation, and that the knowledge imparted by a course of study is more important than the title of the degree conferred. However, *this* particular mass grouping of degree-fields would simply be too broad to support

find the evidence of record sufficient to demonstrate that this Beneficiary's work would in fact involve a "body of highly specialized knowledge" attained through a precise and specific course of study that relates directly and closely to the proffered position.

The evidence of record therefore establishes that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty or its equivalent. It qualifies for classification as a specialty occupation as the term is defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). It also establishes that the position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, or the equivalent, and it therefore also satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The record demonstrates that the Beneficiary possesses a U.S. bachelor's degree in biology, so she is qualified to perform the duties of this specialty occupation.

**ORDER:** The appeal is sustained.

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a conclusion that the proffered position meets the definition of a "specialty occupation." Numerous unrelated specialties would appear to fall within Counsel's "quantitative and analytical" range: for example, it would appear as though a bachelor's degree in *any* non-humanities field might qualify an individual to perform the duties of the proffered position (and depending upon the specific coursework undertaken while obtaining the degree, certain fields within the humanities might also fall within that range).

The record of proceeding does not establish how every course of study that could be vaguely described as having "quantitative and analytical" elements would relate to the duties of the proffered position, and if a degree in any of these disparate fields would in fact equally prepare an individual to perform the duties of a proffered position, then we would have to question whether the position actually involves a "highly specialized body of knowledge" or requires a bachelor's degree in a "specific specialty," or the equivalent.

However, given the overall credibility of this petition, and the detailed manner in which the Petitioner and its expert described the proffered position's associated entry requirements, we find it unlikely that every course of study that could be vaguely described as having "quantitative and analytical" elements would actually prepare a beneficiary to perform its duties.

The unsupported statements of an attorney on appeal or in a motion are not evidence. *See INS v. Phinpathya*, 464 U.S. 183, 188 n.6 (1984); *see also Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Consistent with *Phinpathya* and *Ramirez-Sanchez*, we hereby disregard these statements.