



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF S-I-S- INC

DATE: MAY 2, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an information technology services company, seeks to temporarily employ the Beneficiary as a “systems analyst” 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 California Service Center Director denied the petition, concluding that the Petitioner had not established that the proffered position is a specialty occupation.

On appeal, the Petitioner asserts that the Director overlooked documentation and explanations demonstrating that the position qualifies for a specialty occupation designation.

Upon *de novo* review, we will dismiss the appeal.¹

I. SPECIALTY OCCUPATION

A. 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

¹ The Petitioner submitted documentation to support the H-1B petition, 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.

- (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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

As recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

B. Nature of the Position

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner noted the Beneficiary will work offsite as a systems analyst. In an addendum to the Beneficiary’s December 2015 employment contract, the Petitioner indicated that the Beneficiary will work on various projects and outlined the percentage of time he will spend on requirements gathering, system configuration, documentation, writing source code, development, and end-user support. The Petitioner did not refer to the

Beneficiary's specific assignment but listed eight of eleven duties listed on the Beneficiary's resume. The Petitioner also included a letter, dated March 13, 2017, from the mid-vendor, [REDACTED] regarding the Beneficiary's proposed assignment. The [REDACTED] representative indicated that the Beneficiary will work at its client, [REDACTED] (or end-client), as a systems analyst.

Although the record also includes a statement of work (SOW) from the end-client, [REDACTED] for a [REDACTED] and [REDACTED] project, the project duration is for a three-month period beginning October 1, 2016 and ending December 31, 2017. In the SOW, the end-client requested five "qualified, experienced" [REDACTED] resources (and also one part-time lead and one architect on an as needed basis) to work on this project. Also in the SOW, the end-client provided an overview of the services needed to complete a list of deliverables, such as business requirements development, code development, testing, implementation, enhancement support, as well as advisory services, technical support, and staff augmentation during the project upgrade. Neither the overview of duties nor the list of deliverables corresponds to the duties and responsibilities described in the mid-vendor's letter or the Petitioner's letter. The SOW does not specifically list a systems analyst position as part of the required resources.² The lack of specific evidence from the end-client describing the Beneficiary's proposed assignment precludes a determination that the proffered position in this matter requires an educational background, or its equivalent, commensurate with a specialty occupation.

Even if we were to consider the Petitioner and mid-vendor's stated job descriptions, we would find them inconsistent and insufficient to demonstrate that the proffered position requires an educational background, or its equivalent, commensurate with a specialty occupation. The [REDACTED] representative provided a list of 6 job duties it claimed related to the project. These 6 duties correspond to 6 of the 11 duties the Beneficiary listed on his resume as work for [REDACTED] as a business systems analyst. In response to the Director's request for evidence (RFE), the Petitioner provided a bullet list of 13 responsibilities for the proffered position which included the 11 duties listed on the Beneficiary's resume with an additional 2 duties. On appeal, the Petitioner lists the same 13 responsibilities previously provided and provides an overview of the duties of a generic systems analyst position indicating that the Beneficiary will spend 40 percent of his time on system analysis, generation of requirements and specifications, 40 percent of his time on execution and implementation of project activities, 25 percent of his time on communication, and 5 percent of his time on miscellaneous general administration. This overview does not identify a specific project or the Beneficiary's role in any specific project.

The Petitioner and mid-vendor's stated job descriptions, which appear to correspond in part to the Beneficiary's past, and not proposed, duties, do not include sufficient information to ascertain the

² The SOW lists the resources as a practice/site lead, a senior business analyst, a business analyst, a senior developer, a developer, a QA/testing analyst, and an architect. As the SOW does not identify a specific systems analyst position for the Beneficiary to perform, we are unable to conclude that the proffered position is actually a systems analyst position, and if so, one that requires an educational background, or its equivalent, commensurate with a specialty occupation.

complexity of the duties and the Beneficiary's level of responsibility when performing the duties. Although the duties appear to fall within the parameters of a systems analyst occupation, the duties do not effectively describe what the Beneficiary will be expected to do on a daily basis.

C. Minimum Requirements

The Petitioner initially asserted that the "usual minimum requirement for performance of the job duties is a Master's or Bachelors of Science in any discipline in Engineering, or computer science or information systems or a related analytic or scientific discipline or its equivalent in education or work-related experience." The Petitioner's advertisements, provided in response to the Director's RFE and again on appeal, indicate that the requirement for its systems analysts is a "US Equivalent Bachelor's degree with 5 years related experience or Master Degree with or without experience." The [REDACTED] representative noted that the duties it described "typically requires a person with a Bachelor of Engineering or Technology field in addition to relevant work experience." The end-client requires "qualified, experienced" resources for its three-month project.

Whether we consider the Petitioner's requirements or the requirements of the mid-vendor or end-client, the companies do not identify an educational requirement of a degree in a specific specialty directly related to the duties of the position. The Petitioner seems to accept bachelor's degrees in a wide range of analytic or scientific disciplines. For example, any engineering field includes chemical engineers, nuclear engineers, and aerospace engineers, disciplines which appear to be related only through the basic principles of science and mathematics. The acceptance of such a broad base of knowledge to perform the duties of the proffered position conflicts with the statutory definition of specialty occupation, which requires a bachelor's degree in "*the* specific specialty." Section 214(i)(1) of the Act (emphasis added).³ The Petitioner also indicates in its advertisement for a systems analyst that a general U.S. Bachelor's degree is acceptable if the prospective applicant also has 5 years of related experience. The Petitioner's advertisement does not include information sufficient to determine that the additional 5 years of experience must be in a specific area, e.g., whether the "related experience" can also be in a wide range of analytic or scientific disciplines. Thus, the Petitioner's own requirements for the proffered position do not establish that the position is a specialty occupation.

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. The Petitioner has not done so here. Without more, the Petitioner's acceptance of a

³ Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Nevertheless, we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As explained more below, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

general bachelor's degree and an undefined 5 years of experience strongly suggest that the proffered position is not a specialty occupation.

Moreover, even if we assumed the proffered position were a systems analyst position as the Petitioner claims, it also could not be found that the proffered position qualifies as a specialty occupation as the Petitioner has not satisfied any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

D. Criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) 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.

On the labor condition application (LCA)⁴ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Systems Analyst" corresponding to the Standard Occupational Classification (SOC) code 15-1121. The Petitioner also asserts that the duties of the proffered position fall within the Department of Labor's *Occupational Outlook Handbook's (Handbook)* chapter for this occupation, and that the *Handbook* and the Occupational Information Network (O*NET) Summary Report for SOC code 15-1121.00 – Computer Systems Analysts establish the position is a specialty occupation. We disagree.

The *Handbook's* subchapter entitled "How to Become a Computer Systems Analyst" states, in pertinent part, that a bachelor's degree is not always a requirement and that "[s]ome firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming." The *Handbook* also states: "Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere." Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, Computer Systems Analysts*, on the Internet at <https://www.bls.gov/ooh/computer-and-information-technology/print/computer-systems-analysts.htm> (last visited May 2, 2018).

According to the *Handbook*, a bachelor's degree in a directly related discipline is not required for entry into the occupation. While the *Handbook* further reports that many analysts have technical degrees, the *Handbook* does not specify the degree level for these technical degrees (e.g., associate's degree). Further the *Handbook* states that business and liberal arts degrees may be acceptable. Thus, the *Handbook* does not support the claim that the occupational category of "Computer Systems Analysts" is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a

⁴ The Petitioner is required to submit a certified LCA to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the "area of employment" or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. See *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

specific specialty, or its equivalent.

Regarding the O*NET Summary Report for computer systems analysts, O*NET 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.” O*NET OnLine Summary Report for “15-1121.00 – Computer Systems Analysts,” <http://www.onetonline.org/link/summary/15-1121.00> (last visited May 2, 2018). Significantly, O*NET does not indicate that a four-year bachelor’s degree required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Again, the requirement of a general bachelor’s degree for entry into the occupation does not establish that the occupation is a specialty occupation. The O*NET information does not refer to any specific discipline, as required, therefore the information is not probative of the proffered position being a specialty occupation.⁵

On appeal, the Petitioner also refers to a number of university, state, and wage websites in support of its assertion that a computer systems analyst position is a specialty occupation. Although the articles discuss career paths, repeat the information found in the *Handbook* regarding this occupation, and discuss the generic duties of this occupation, the information provided does not indicate that a bachelor’s degree in a specific specialty is required to perform the duties of the occupation.

The Petitioner also re-submits an opinion prepared by [REDACTED] regarding the nature of the proffered position and the Beneficiary’s qualifications. [REDACTED] recites the Petitioner’s overview of the occupation of a systems analyst as well as the duties listed on the Beneficiary’s resume and adopted by the Petitioner as the proposed duties of the occupation. [REDACTED] concludes, intermittently, that these duties require “[a] Bachelor’s degree in science, technology, engineering or a closely related field,” “a Bachelor’s degree in the field of Computer Information Systems, Engineering or a closely related field,” “a bachelor’s degree in Computer Information Systems, Software Engineering, or a related technical field,” and “a bachelor’s degree in a specialized, technical computer-related field.” Thus, [REDACTED] does not limit the bachelor’s degree required to perform the duties of the proffered position to a bachelor’s degree in a specific specialty. Rather he appears to acknowledge that a general science or technology degree, or a bachelor’s degree in an undefined technical computer-related field is sufficient to perform the duties of the proffered position.

⁵ To properly determine the appropriate wage level, the Petitioner must first correctly identify the O*NET occupation, then continue by comparing its required experience, education, special skills and other requirements, and supervisory duties to those described in the O*NET entry for the selected occupation. See U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. For the “Computer Systems Analysts” occupational category, which O*NET assigns a “Job Zone Four,” the Petitioner’s claimed educational requirements for the proffered position is not consistent with its selection of a Level I wage. For example, the requirement for five years of additional experience (beyond a bachelor’s degree) warrants a multi-step increase in the wage for a computer programmer position. Similarly, the requirement for a master’s degree results in a level wage increase as well. In either scenario, the Level I wage level selected on the LCA is not appropriate for the proffered position, and therefore, raises questions about the position’s substantive nature and level of responsibility.

Moreover, [REDACTED] does not support his conclusion with the results of formal surveys, research, statistics, or other objective quantifying information to substantiate his opinion.⁶ We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.*

E. Criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)

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 concentrates upon the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

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.

Here and as already discussed, 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 also submits several job postings to establish that a bachelor’s or higher degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. The Petitioner, however, does not establish that the advertising employers are similar to it in terms of size, scope, and nature. Additionally, the Petitioner has not explained how the advertised positions, although labeled computer systems analysts or business systems analysts, are parallel to the position described here. The duties described in the advertised positions are generic and do not appear to correspond to the Petitioner’s systems analyst position.

Moreover, even if all of 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), the Petitioner does not demonstrate what statistically valid inferences, if any, can be drawn from the limited job postings with regard to the common educational requirements for entry

⁶ [REDACTED] attaches two job postings to his opinion to establish that the advertising employers require a bachelor’s level degree along with experience to perform the duties of the advertised position. However, he does not offer a comparison of the duties and the level of responsibility required for the advertised positions to the position proffered here.

into parallel positions in similar organizations. *See generally Earl Babbie, The Practice of Social Research* 186-228 (7th ed. 1995).

The Petitioner also submitted three letters from companies it claims are in the same industry and are similar to it. Each letter includes the exact same description for the disparate occupations of “Programmer/Analyst, Software Developer, Software Engineer, Systems Analyst, Database Administrator,” and each letter includes the same typographical error in their conclusion that the duties described require the “equivalent of Bachelor’s in computer [*sic*] or its equivalent.” We question the authenticity of these letters and find the lack of a specific description pertaining to a specific occupation insufficient to establish an industry standard for a computer systems analyst position that is parallel to the proffered position.

The evidence submitted is insufficient to demonstrate 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 Petitioner’s industry in parallel positions among similar organizations.

2. Second Prong

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 Petitioner does not directly address this criterion on appeal, but implies that the Beneficiary’s educational background and experience qualify him to carry out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself qualifies as a specialty occupation. The Petitioner does not explain or clarify at any time in the record which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The Petitioner has thus not established the proffered position as satisfying either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

F. Criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3)

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.

On appeal, the Petitioner asserts that it normally requires a minimum of a bachelor’s degree for its computer systems analyst and refers to the previously submitted job postings. As discussed above, however, the Petitioner’s advertisement does not identify an educational requirement of a degree in a specific specialty directly related to the duties of the position. Moreover, the Petitioner’s claimed degree requirement appears to be a matter of preference for high-caliber candidates and not necessitated by the performance requirements of the position. *See Defensor*, 201 F.3d at 387-88. Were we limited solely to reviewing a petitioner’s claimed self-imposed requirements, an

organization could bring any individual with a bachelor's degree to the United States to perform any occupation as long as the petitioning entity created a token degree requirement. *Id.*

G. Criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

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.

The Petitioner does not include sufficient information for the record to ascertain the specialization or complexity of the proposed duties and the Beneficiary's level of responsibility when performing those duties. Although the Petitioner provides background information on its business, the Petitioner provides a general and inconsistent description of the Beneficiary's claimed tasks. The Petitioner does not adequately explain how the various general descriptions show (1) the actual work that the Beneficiary will perform on a daily basis; (2) the complexity or specialization of the tasks; or (3) the correlation between the work and a need for a particular level of education of highly specialized knowledge in a specific specialty. The evidence of record does not establish that this position is significantly different from other computer systems analysts positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for computer systems analysts positions, including degrees not in a specific specialty.

The Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

II. SPECULATIVE EMPLOYMENT

As noted above, the Petitioner submits a SOW between [REDACTED], the mid-vendor, and [REDACTED] the end-client. The SOW is for a three-month duration, corresponding to the first three months of the petition's requested employment period for this Beneficiary. Notably, the SOW does not refer to the Beneficiary or list a systems analyst as one of the specific resources the end-client expects to deliver the work. The Petitioner has not submitted supporting documentation to substantiate that the Beneficiary will be engaged at the end-client location during the entire requested validity period.

We observe the work agreement between the Petitioner and mid-vendor is specifically for the Beneficiary's services at the end-client's address. This work agreement accompanies the master services agreement between the Petitioner and mid-vendor. However, there is no evidence that the end-client endorsed this particular work agreement. Moreover, this work agreement is for work to be performed "beginning on August 24, 2016 . . . and terminating on the 'end date' of April 24, 2016." The dates of work stated in this work agreement, besides being illogical, do not substantiate work for the Beneficiary for the entire requested validity period, either.

Thus, we also find that the Petitioner has not established non-speculative work for the Beneficiary at the time of the petition's filing for the entire period requested.⁷

III. CONCLUSION

The Petitioner has not established the proffered position is a specialty occupation and that it has non-speculative specialty occupation work for the requested employment period.

ORDER: The appeal is dismissed.

Cite as *Matter of S-I-S- Inc*, ID# 1255770 (AAO May 2, 2018)

⁷ The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,419-20 (proposed June 4, 1998) (to be codified at 8 C.F.R. pt. 214). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).