



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

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

In Re: 13856437

Date: FEB. 10, 2021

Appeal of California 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.<sup>1</sup> 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 record did not establish that the Beneficiary was qualified to perform the services of the specialty occupation under INA section 214(i)(2). On appeal, the Petitioner asserts that the Director's decision was in error. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence.<sup>2</sup> We review the questions in this matter *de novo*.<sup>3</sup>

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

## I. SPECIALTY OCCUPATION

As a preliminary matter, we note the Director did not address whether the proffered position is a specialty occupation. In accordance with long-standing legal standards, we must first determine whether the proffered position qualifies for classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed.<sup>4</sup>

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<sup>1</sup> See Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

<sup>2</sup> Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

<sup>3</sup> See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

<sup>4</sup> Cf. *Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a 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
- (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.<sup>5</sup>

## B. Analysis

The Petitioner, a software, services, and internet technologies company, states the Beneficiary will be employed as a “software engineer.” It designates the proffered position on the labor condition application (LCA) as a standard occupational classification (SOC) code 15-1132 “Software Developer, Applications.”<sup>6</sup> The Petitioner states the proffered position requires a bachelor’s degree or equivalent in computer science, engineering, or a related field and provides the following duties:<sup>7</sup>

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<sup>5</sup> 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”).

<sup>6</sup> A petitioner submits the LCA to DOL 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 duties, experience, and qualifications. See Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

<sup>7</sup> While we will not quote the entire description for the sake of brevity, we have reviewed and considered it in full.

- Design and verify product features for [Petitioner]’s computer software, systems, and services. - 20%
- Support design reviews define interfaces between code modules and apply existing technology to determine whether code is ready for release by considering performance, maintainability, and reliability. - 30%
- Contribute to technical design and feature implementation for [Petitioner]’s next generation technology with the application of data analytics and data modeling. - 30%
- Employ [Petitioner’s] computing principles related to feature design enabling the development of solutions for simple code defects that impact feature areas, customer scenarios, and quality targets. - 20%

In addition to these bullet point duties, the Petitioner added a description and examples of the tasks involved in each duty and explained how the tasks related to its business operations. The totality of the evidence establishes that the position falls within the designated occupation.<sup>8</sup>

Furthermore, we conclude 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 bachelor’s or higher degree in a specific specialty, or its equivalent, as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The proposed duties, when reviewed within the context of the Petitioner’s business operations, are sufficient to demonstrate that the duties of the position require 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 Petitioner has established that the proffered position qualifies for classification as a specialty occupation as defined by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), 8 C.F.R. § 214.2(h)(4)(ii), and (iii)(A)(4).

Although the proposed position may be a “Software Developer, Applications” occupation on its face, the Petitioner has not established how the Beneficiary is qualified to perform the duties of the specialty occupation by its own standards<sup>9</sup> or the standards set out at section 214(i)(2) of the Act and the regulations set out below.

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<sup>8</sup> See Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Software Developers, <https://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm> (last visited Feb. 5, 2021); Occupational Information Network OnLine Summary Report for “15-1132.00 – Software Developers, Applications,” [https://www.onetonline.org/Archive\\_ONET-SOC\\_2010\\_Taxonomy\\_09\\_2020/link/summary/15-1132.00](https://www.onetonline.org/Archive_ONET-SOC_2010_Taxonomy_09_2020/link/summary/15-1132.00) (last visited Feb. 5, 2021).

<sup>9</sup> For example, the Petitioner submits a letter by [redacted] PhD, Associate Professor of Computer Science and Information Systems at [redacted] University, who parses the proffered position’s duties and ascribes concepts and knowledge from computer science and related fields relevant to the performance of those duties.

## II. BENEFICIARY'S QUALIFICATIONS

### A. Legal Framework

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
- (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.

If, as in here, the petitioner is relying on a combination of the beneficiary's education, specialized training, and/or progressively responsible experience to meet the requirements of 8 C.F.R. §214.2(h)(4)(iii)(C)(4), the record must contain evidence that the education, specialized training and/or progressively responsible experience is equivalent to completion of a college degree in the specific specialty required by the specialty occupation. For purposes of paragraph 8 C.F.R. §214.2(h)(4)(iii)(C)(4), equivalence to 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.

In order to determine equivalency, 8 C.F.R. §214.2(h)(4)(D) requires 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 (PONSI);
- (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; or
- (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. 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.

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;<sup>10</sup>

- (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.

It is always worth noting that, 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) to determine, 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.

## B. Analysis

The record reflects that the Beneficiary holds a U.S. baccalaureate degree from an accredited college or university but the degree is not in a specialty directly related to the performance requirements of the proffered position. The Petitioner provides the Beneficiary's diploma and transcript, evidencing a bachelor's degree in business administration. Because the Beneficiary did not hold at least a U.S. bachelor's degree in computer science, engineering or a related field at the time of the petition's filing, the Petitioner asserts that the Beneficiary achieved the equivalent of such a degree by a combination of his academic and employment history, pursuant to 8 C.F.R. §214.2(h)(4)(iii)(C)(4).<sup>11</sup>

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<sup>10</sup> *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. See 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.*

<sup>11</sup> In its response to the Director's request for evidence (RFE), the Petitioner provided a list of courses taken by the Beneficiary in pursuit of his bachelor's in business administration degree and explained how the courses relate to the job duties, highlighting the Beneficiary's data analysis knowledge. To the extent the Petitioner is asserting that the Beneficiary's bachelor's in business administration degree qualifies under 8 C.F.R. §214.2(h)(4)(iii)(C)(4), the record does not support this assertion. The highly specialized knowledge necessary to perform the duties of the position, according to the Petitioner's own standards, e.g. as described in [redacted]'s analysis, is obtained via a bachelor's degree or higher in computer science, engineering, or a related field. The Beneficiary's transcript does not evidence computer science or engineering courses. If there were courses taken by the Beneficiary that would provide the requisite highly specialized knowledge derived from at least a bachelor's degree in computer science or engineering, this was not explained by the Petitioner and it is not self-evident. Furthermore, asserting the duties of the proffered position could be performed by an individual with an unspecialized bachelor's degree in business administration would undermine the specialized nature of the position. A general-purpose degree, without further specification, precludes a determination that the position involves

With respect to determining degree-equivalency, the record does not contain evidence of college-level equivalency examinations, special credit programs, or certification or registration from a nationally-recognized professional association or society, which are relevant to establishing criteria 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), (4). Also, the record’s evaluation documents of the Beneficiary’s education are not from a credentials evaluation service, rendering criterion 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) inapplicable. This leaves the first and fifth criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D) for analysis.

The Petitioner submits an evaluation provided by [redacted] PhD, Professor of Computer Science and Information Systems at [redacted] University in [redacted] Submitted with the evaluation is a letter by the Dean of the [redacted] School of Computer Science and Information Systems at [redacted] University. The dean states that [redacted] University has a “program [] conducted in work study fashion for matriculated students” where “credit is granted to students for specific industry related experience and training.” The dean adds that the professor “is experienced in evaluating relevant . . . work experience of students to determine their academic equivalence” and “ha[s] the authority to grant college level credit based upon students[’] foreign education and industry experience.”

The professor states he bases his opinion on the position description, the Beneficiary’s academic and work experience documentation, the Petitioner’s support letter and the job description. However, the academic and work experience documentation included in the record are limited to the Beneficiary’s diploma, transcript, and three employer letters. One letter evidences the Beneficiary’s employment from June 2012 to March 2013 as a marketing analyst and lists four general duties he performed. The other two letters are from the same employer stating the Beneficiary was in its employ from March 2013 to April 2018, first as a support engineer, then promoted to software developer. The letters do not clarify how many years the Beneficiary worked as a software developer and lists three duties he performed. Each letter states the Beneficiary performed progressively more responsible duties but do not support or explain the statements with details regarding the duties he performed and how they increased in responsibility. The letters also do not explain how the Beneficiary’s work experience includes the theoretical and practical application of specialized knowledge required by the specialty occupation. For this reason, the record does not support the professor’s statements, for example, that the Beneficiary “demonstrated expertise in the field of Computer Science . . . by [his] progressively responsible career trajectory,” “exhibit[s] a level of expertise that is at least comparable to that of a graduate of a domestic Computer Science undergraduate program,” “has experience [] equivalent to no less than one year of academic coursework in the field of Computer Science” and “attained the equivalent of a US Bachelor of Science degree in Computer Science.” Nor is it clear where the professor obtained details regarding the Beneficiary’s duties described in his opinion because he does not cite to the record or elsewhere.

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a “body of highly specialized knowledge” or requires the attainment of a bachelor’s degree in a “specific specialty.” See *Royal Siam*, 484 F.3d at 147; see also *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151 (D. Minn. 1999); *Vision Builders, LLC v. USCIS*, No. CV 19-3159-TJK, 2020 WL 5891546 (D.D.C. Oct. 5, 2020); *Parzenn Partners v. Baran*, No. 19-cv-11515-ADB, 2019 WL 6130678 (D. Mass., Nov. 19, 2019); *XiaoTong Liu v. Baran*, No. 18-00376-JVS, 2018 WL 7348851 (C.D. Cal., Dec. 21, 2018); *2233 Paradise Road, LLC v. Cissna*, No. 17-cv-01018-APG-VCF, 2018 WL 3312967 (D. Nev., July 3, 2018).

Furthermore, the professor does not provide details of how he assessed the Beneficiary's work experience and the record does not evidence the professor used similar standards to the university's credit granting program. According to printouts in the record, [ ] University has requirements a student must meet to be granted credit under its "experiential learning" program. For example, the university awards credit based on students' ability to demonstrate that their experiences constitute college-level learning and they are encouraged to take a two-credit course on how to assemble an appropriate portfolio to meet the university's specifications for the program. This level of expected detail is inconsistent with the sparse letters the professor relies upon to base his opinion, as it is unclear whether the professor had sufficient documentation to make this evaluation regarding the Beneficiary's prior educational and work experience. In addition, according to the requirements, "experiential learning" is not assessed after a credit load of 96 credits to avoid duplication of credits, yet the professor makes his assessment after the Beneficiary has attained 180 credits without an explanation of his process for similarly avoiding duplication. As a result, the record does not establish the professor followed an equally rigorous process in determining the equivalency of the Beneficiary's experiences as required by the university, thereby minimizing the probative value of the professor's opinion regarding the beneficiary's qualifications.<sup>12</sup> It is the Petitioner's burden to establish that the Beneficiary's education, specialized training, and/or progressively responsible experience is "equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation."<sup>13</sup> The professor's evaluation, with its conclusory statements lacking analysis and support from the record, does not meet this burden. Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition.<sup>14</sup>

Thus, we do not find the requirements of 8 C.F.R. §214.2(h)(4)(iii)(D)(I) have been met.

For the reasons listed above, the record is also not sufficient to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As noted above, the employer letters submitted to establish the Beneficiary's past work experience describe the Beneficiary's duties in three or four bullets and do not provide sufficient details to ascertain whether his work experience included the theoretical and practical application of specialized knowledge. The record does not include documentation demonstrating that the Beneficiary's experience was gained while working with peers, supervisors, or subordinates who had a bachelor's degree, or its equivalent, in the specialty occupation. There is no information in the record establishing the breadth and depth of the Beneficiary's knowledge or his colleagues' knowledge. Moreover, claiming that the Beneficiary gained progressive experience, without detailing how the experience was gained is insufficient.

Finally, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) imposes a separate requirement to demonstrate that the Beneficiary "has recognition of expertise in the specialty evidenced by at least one type of documentation" listed. However, the Petitioner has not provided evidence of the types of documentation listed in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v). Consequently, we cannot conclude

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<sup>12</sup> See *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is "not in accord with other information or is in any way questionable.").

<sup>13</sup> 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

<sup>14</sup> See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).



that the Beneficiary's work experience is equivalent to at least a U.S. bachelor's degree in the specific specialty, based on the record.

For the reasons outlined above, the record does not sufficiently demonstrate that the Beneficiary is qualified for a "Software Developer, Applications" specialty occupation position.

### III. CONCLUSION

Upon review of the totality of the evidence submitted, the Petitioner has not established that more likely than not, the Beneficiary is qualified to perform the services of the specialty occupation under Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2). In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought.<sup>15</sup> The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

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<sup>15</sup> See Section 291 of the Act, 8 U.S.C. § 1361.