



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

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

In Re: 33861453

Date: SEP. 18, 2024

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 file a petition with U.S. Citizenship and Immigration Services (USCIS) 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 is a specialty occupation. The matter is now before us on appeal pursuant to 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. LAW

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . .” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires the “theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(1) of the Act, but adds a non-exhaustive list of fields of endeavor.

In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the proffered position must meet one of the following criteria to qualify as a specialty occupation position: (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) must be read with the statutory and regulatory definitions of a specialty occupation under section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). 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”).

Accordingly, to determine whether a beneficiary will be employed in a specialty occupation, we look to the record to ascertain the services the beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor’s degree or higher in a specific specialty or its equivalent.

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. ANALYSIS

The Petitioner seeks to employ the Beneficiary in the position of “engineer project manager.” On the certified labor condition application (LCA) submitted in support of the petition, the Petitioner designated the position to be in the occupational category of “Project Management Specialists,” with Standard Occupational Category (SOC) code 13-1082. The Petitioner did not initially provide its minimum educational requirements for the position, but stated that the position is recognized by the U.S. Department of Labor (DOL) as a professional position which normally requires a bachelor’s or higher degree in a specific specialty based upon the DOL’s *Occupational Outlook Handbook (Handbook)*. *See* Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Project Management Specialists (Aug. 29, 2024), [www.https://bls.gov/ooh/business-and-financial/project-management-specialists.htm](https://bls.gov/ooh/business-and-financial/project-management-specialists.htm). The *Handbook* states that individuals in this occupational category typically need “a bachelor’s degree in business, project management, or a related field” and that some employers “prefer to have candidates who have a degree in a technical field related to the industry in which they will work, such as computer and information technology or engineering.” In response to the Director’s request for evidence (RFE), the Petitioner still did not articulate its minimum requirement for the position. Instead, the Petitioner asserted that the position qualifies as a specialty occupation based upon the *Handbook’s* guidance, based upon the educational requirements of other employers’ positions, and based upon the specialized and complex nature of the position’s job duties.

The Director denied the petition, finding that the Petitioner did not specify its minimum educational requirements for the position and therefore did not establish that the position is a specialty occupation as defined by the statute and regulations.

On appeal, the Petitioner maintains that it need not state its minimum requirements for the position to establish that the position is a specialty occupation. Instead, the Petitioner claims that, based upon the statutory and regulatory language, the appropriate question is the educational requirement for the occupational category in general, and not the specific requirements for the Petitioner's proffered position. The Petitioner also points to the criteria at 8 C.F.R. § 214.2(h)(4)(ii)(A) in support of this claim, and notes that the third criterion, at 8 C.F.R. § 214.2(h)(4)(ii)(A)(3), states that a position can be a specialty occupation if the employer normally requires a degree or its equivalent for the position. Because a petitioner need only establish one of the four criteria at 8 C.F.R. § 214.2(h)(4)(ii)(A), the Petitioner claims that it only needs to demonstrate its own minimum requirements if it is seeking to establish eligibility based upon this criterion. The Petitioner contends that, by requiring it to state its minimum requirements, USCIS is improperly requiring it to establish the third criterion, regardless of whether the position establishes any other criterion.

The Petitioner's claim that it need not describe its minimum requirements for the proffered position in order to establish eligibility is not persuasive. Although the occupational category is an important consideration when determining whether a position is a specialty occupation (and the designation of a specific occupational category is necessary for obtaining the requisite certified LCA), it is the actual services that the Beneficiary will provide, in addition to the general occupational category, that we look to in determining whether the Beneficiary will be employed in a specialty occupation. As stated above, we look to the record to ascertain the services the Beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor's degree or higher in a specific specialty or its equivalent. The Petitioner bears the burden to demonstrate that it requires the 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. Section 214(i)(1) of the Act. Without defining a minimum educational requirement, the Petitioner has not met its burden to establish that its position requires a bachelor's degree in a specific specialty.

We also conclude that the regulation at 8 C.F.R. § 214.2(h)(4)(ii)(A)(1) does not support the Petitioner's reading of the statutory and regulatory requirements, as the Petitioner claims. This first criterion states that a position can be a specialty occupation if a bachelor's or higher degree, or its equivalent, is normally the minimum requirement for entry into the particular position. Rather than supporting the Petitioner's assertion that we need only look to the normal requirements for the *general occupational category*, the plain language of this criterion states that we must look to the normal requirement for the *particular position*. If a proffered position falls within an occupational category that normally requires a bachelor's degree or its equivalent in a specific specialty—as shown, for example, based upon information from the *Handbook*—and the petitioner's own educational requirements reasonably align with that occupational category's normal minimum requirements, this would in fact be helpful in demonstrating that the position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(ii)(A)(1). However, a petitioner's minimum requirements for entry into the occupation are still critical to our analysis and determination regarding whether a position is a specialty occupation. Not every position within a general occupational category will have duties which align

with that broader category, and therefore will not necessarily require the theoretical and practical application of a body of highly specialized body of knowledge or the attainment of a bachelor's or higher degree in a specific specialty or its equivalent, simply because the occupational category generally does.

But moreover, even were we to accept that the Petitioner could rely solely on establishing the normal minimum requirements for the general occupational category, rather than the proffered position—which we do not—the Petitioner's argument would still fail based upon the occupational category at issue here. The Petitioner urges us to rely on the *Handbook's* guidance, but the *Handbook* does not support a finding that positions in this occupational category generally qualify as specialty occupations. Rather, the guidance states that “Project Management Specialists” typically need a bachelor's degree that “may be in a variety of fields, including business or project management” and that some employers prefer candidates with a degree “in a technical field related to the industry in which they will work, such as computer and information technology or engineering.” See Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Project Management Specialists, *supra*. The *Handbook* therefore shows that there are a wide variety of fields that may prepare an individual for entry into the occupation, and not that a degree in a specific specialty, or its equivalent, is normally required. We also note that one of the *Handbook's* suggested degrees is a degree in business. We have consistently stated that, although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a conclusion that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp.*, 484 F.3d at 147. Therefore, the record does not show that, based upon the occupational category at issue, a bachelor's degree or higher in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The Petitioner also claims on appeal that the Director did not sufficiently analyze or discuss the evidence submitted in response to the RFE. The Petitioner asserts that it submitted detailed information on multiple projects completed by the Beneficiary, examples of the Beneficiary's work product, and professional articles written about the industry and the complexity of the work, and that the Director ignored this evidence. The Petitioner states that the Director abused their discretion by not discussing or acknowledging this evidence, not explaining the reasoning for the denial and not offering a sufficient basis for the denial. On appeal, the Petitioner contends that the Director erred because the Director did not cite or discuss whether the position meets any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We acknowledge that the Director did not specifically discuss this evidence and did not analyze whether the position qualifies as a specialty occupation under any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). However, this does not establish that the Director's decision lacks a sufficient basis. Rather, because the Petitioner did not describe its minimum requirements for the position, the Director concluded that the Petitioner did not meet its burden of proof to demonstrate that the position is a specialty occupation within the meaning of the statute and the regulations, regardless of whether it meets any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We agree. We acknowledge the evidence in the record regarding job postings from other companies, evidence of the Beneficiary's work product, and information about the Petitioner's products, services, and industry. But as stated above, the Petitioner has not defined its minimum educational requirements

for the position and has not defined the specific specialty in which the theoretical and practical application of a body of highly specialized knowledge is required. Particularly where the occupational category supports the conclusion that a wide variety of disparate fields are acceptable for entry into the occupation, the Petitioner has not met its burden to establish that the position is a specialty occupation.

The Petitioner did not state its minimum educational requirements for the position, and therefore did not define the specific specialty in which a body of highly specialized knowledge is required. The lack of information regarding the requirements for the proffered position impedes our ability to analyze whether the position requires the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry, and thus whether the position is a specialty occupation. This necessitates the denial of the petition.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.