



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

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

MATTER OF B-P-, INC.

DATE: AUG. 23, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an architectural lighting design firm, seeks to temporarily employ the Beneficiary as a “lighting designer” 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 Vermont Service Center Director denied the petition, concluding that the Petitioner had not established the proffered position is a specialty occupation.

On appeal, the Petitioner asserts that the Director erred and that the proffered position is a specialty occupation.<sup>1</sup>

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

#### I. 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.

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<sup>1</sup> 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.

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”).

## II. PROFFERED POSITION

The Petitioner states that it is an architectural lighting consulting firm with almost 50 years of industry experience designing and creating effective lighting solutions for major projects. The Petitioner provided a description of the proposed duties of the position and in response to the Director’s request for evidence (RFE), allocated the Beneficiary’s time to those duties as follows:

- Design interior and exterior lighting systems for commercial, pharmaceutical and office buildings using CAD software [REDACTED] with calculation software [REDACTED] together with other business software applications such as Excel and Word; 15% of time
- Evaluate light levels in interior and exterior spaces using quantified metrics such as correlated color temperature (CCT) and color rendering index (CRI) to regulate levels so recommended light levels and other prescribed safety and regulatory standards are adequately meet [*sic*]; 15% of time
- Evaluate the given project’s lighting systems and their operating mechanism for the overall appearance of the space in terms of color, temperature, color rendering and depreciation factors for lamps, luminaries and lighting systems, design multiple potential lighting systems within set budget constraints; 15% of time

- Evaluate lighting fixtures provided by different manufactures [*sic*] on their optical systems, price points, product longevity, and overall performance; 15% of time
- Confer with the company's various clients to determine factors affecting interior lighting system and its project planning and initiation, such as budget, architectural preferences, purpose, function, utilization of texture or equipment, and color coordination, ensure all relevant documentation is consistently maintained; 15% of time
- Prepare physical copies of sketches of ideas, detailed drawings, illustrations, artwork, or blueprints using drafting instruments and computer-aided design and drafting software; 15% of time
- Present designs and reports to customers or design committees for approval, and discuss possible need for modification as appropriate, prepare additional options for presented designs and reports for potential modifications and alterations[.] 10% of time

The Petitioner initially stated that “[t]he minimum requirement for this position is a Bachelor’s degree in a related field such as Interior Design, Lighting Design or a related field.” In response to the Director’s RFE, the Petitioner stated that it “now hire[s] people with Masters Degrees specifically in the field.” On appeal, the Petitioner asserts that it “has always required at least a bachelor’s degree in interior design or related field of study for the Lighting Designer position.”

On the labor condition application (LCA)<sup>2</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the general occupational category “Designers, All Other” corresponding to the Standard Occupational Classification (SOC) code 27-1029.<sup>3</sup>

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<sup>2</sup> 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 duties, experience, and qualifications who are performing the same services. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

<sup>3</sup> The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). The “Prevailing Wage Determination Policy Guidance” issued by the Department of Labor provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). A wage determination starts with an entry-level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.*

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation under any of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The record does not establish that the job duties, as described, require the theoretical and practical application of a body of a highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline.

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

This criterion 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. We recognize the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup>

The Petitioner's description of duties relates to a lighting designer position. On appeal, the Petitioner contends that the proffered position is "appropriately categorized under the SOC code 27-1029, Designers, All Other because a Lighting Designer is a position within the niche area of lighting design that does not easily fit into the other SOC occupational classifications." The Petitioner refers to the *Handbook* and notes that the "closely related occupational category of Interior Designers may be helpful to determine the minimum educational requirements for entry into a Lighting Designer position." However, the *Handbook* does not report that a minimum of a bachelor's degree in a specific discipline is necessary to perform the duties of an Interior Designer position.

The *Handbook's* subchapter entitled "How to Become an Interior Designer," states in pertinent part, that "[a] bachelor's degree is usually required in order to become an interior designer, as are classes in interior design, drawing, and computer-aided design (CAD)." The *Handbook* adds that "[i]nterior designers usually need a bachelor's degree with a focus on interior design or interior architecture" but then states "[a] bachelor's degree in any field is acceptable." Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Interior Designers, at <https://www.bls.gov/ooh/arts-and-design/interior-designers.htm> (last visited Aug. 22, 2018). The *Handbook's* recognition that a bachelor's degree in any field is acceptable conflicts with the statutory requirement that the bachelor's degree must be in a specific discipline to demonstrate the position is a specialty occupation. Thus, if we assess the proffered position using the *Handbook's* discussion of "Interior Designers," the *Handbook* does not support the position's eligibility under this criterion.

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<sup>4</sup> Our references to the *Handbook* may be accessed at <http://www.bls.gov/ooh/>. We do not maintain that the *Handbook* is the exclusive source of relevant information. To satisfy the first criterion, the burden of proof remains on the Petitioner to submit sufficient evidence to support a conclusion that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

Similarly, the Occupational Information Network (O\*NET) is insufficient to establish that an “Interior Designer” occupation qualifies as a specialty occupation normally requiring at least a bachelor’s degree in a specific specialty, or its equivalent. Although the O\*NET reports that many interior designers possess a bachelor’s degree, the O\*NET does not state a requirement for a bachelor’s degree for an “Interior Designer” occupation. Rather, it 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.” See O\*NET OnLine Summary Report for “27-1025.00 – Interior Designers,” <https://www.onetonline.org/link/summary/27-1025.00> (last visited Aug. 22, 2018). More importantly, O\*NET does not indicate that four-year bachelor’s degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. The O\*NET information does not establish that an “Interior Designer” occupation is a specialty occupation.

In this matter, neither the *Handbook* nor O\*NET include substantive information on the occupational category of “Designer, All Other” or the niche occupation of a lighting designer. As the related occupation of “Interior Designers” does not require a bachelor’s degree in a specific specialty according to the authoritative sources of the *Handbook* and O\*NET, and these sources do not offer substantive information on the educational requirements of a lighting designer, there is insufficient probative evidence to establish this criterion.

B. 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[.]”<sup>5</sup> 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.

To establish the first prong of this criterion, the Petitioner submitted three job postings on appeal as evidence that its degree requirement is common to the industry in parallel position. Two of the advertisements do not include a substantive description for the proffered position, thus the advertisements do not demonstrate that these two advertised positions are parallel to the proffered position. The third advertisement also does not appear parallel to the proffered position. It identifies the position as a graduate lighting consultant who will learn and apply different elements; it requires a bachelor or master’s degree in architectural or interior design, lighting or architectural engineering, and internship experience in a consulting firm with emphasis on electrical design, academic research or testing with relevant focus, and membership in [redacted] and [redacted] among other requirements. The Petitioner does not state that it requires internship experience, academic research, or

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<sup>5</sup> We will discuss the second prong in section D below.

membership in any professional organization.<sup>6</sup> It does not appear that the proffered position is parallel to the positions in any of the three job postings.

The three job postings do not support the Petitioner's assertion that similar organizations in its industry have a common degree requirement of a bachelor's or higher degree, or its equivalent, in a specific specialty, for a parallel position of a lighting designer. The record does not establish that "[t]he degree requirement is common to the industry in parallel positions among similar organizations." Thus the Petitioner has not satisfied the first prong of the regulation 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

To establish this criterion, the Petitioner must submit evidence of its normal hiring requirements for the proffered position. To establish this criterion, the Petitioner asserts on appeal that the evidence previously submitted, evidence that two previous employees in the lighting designer position possessed masters' degrees in lighting design, were to serve as examples of the types of candidates it routinely hired for the proffered position. The Petitioner then lists nine of its lighting designers (one current and eight previous lighting designers, including the two initially referenced), and identifies each of the lighting designers as possessing a master's degree in lighting design.

It thus appears that the Petitioner's normal hiring requirements are a master's degree in lighting design, not a bachelor's degree in interior design, lighting design, or a related field. This creates an inherent inconsistency within the record when the Petitioner is attempting to satisfy this criterion. That is, the Petitioner claims that it requires a bachelor's degree for the proffered position, but the evidence of its normal hiring requirements show that it normally hires individuals with a master's degree.<sup>7</sup> The Petitioner must resolve this ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent, as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. Here, the Petitioner has not sufficiently developed the duties of the proffered position to establish that the position requires either a bachelor's or master's degree in a specific discipline. Instead the record demonstrates that the Petitioner's stated degree requirement is more likely than not a matter of preference for high-caliber

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<sup>6</sup> Membership in particular organizations may require an increase in the wage level. As the Petitioner has designated the proffered position at a Level I wage, it does not appear that this advertisement is parallel to the proffered position.

<sup>7</sup> Neither O\*NET nor the Appendix D of the DOL guidance identifies the minimum requirements for the occupational category "Designers, All Other," SOC code 27-1029. However, if the Petitioner is comparing the proffered position to an "Interior Designer" occupation, this occupation is a Job Zone Four occupation and is included in the education and training category "5." Thus if the Petitioner normally requires a master's degree to perform the duties of an occupation similar to an "Interior Designer" occupation, an increase in the wage level will be required.

candidates. Again, the record does not demonstrate that the actual performance requirements of the position require a bachelor's degree or higher in a specific discipline.

We have reviewed the "printout of [the Petitioner's] job posting for the Lighting Designer position," offered for the first time on appeal. The posting does not include a description of the proposed duties but specifies the qualifications for the proffered position. The qualifications include a bachelor's degree or above in lighting, architecture, interior design or related education and proficiency or familiarity with a number of third party software applications, among other things. However, the Petitioner does not include evidence of where or when this advertisement was posted, if ever. It must be noted that evidence the Petitioner creates after a decision is issued will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven.<sup>8</sup> The posting does not include sufficient information to establish its probative value in the matter at hand.

The Petitioner has not offered persuasive and consistent evidence of its normal hiring requirements for the proffered position. The Petitioner has not established the third criterion at 8 C.F.R. § 214.2(h)(4)(ifi)(A).

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

As noted above, 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 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.

In response to the Director's RFE, the Petitioner provided an opinion prepared by [REDACTED] Associate Professor of Interior Design at [REDACTED]. [REDACTED] reviewed the Petitioner's description of duties and lists 12 courses the Beneficiary completed for her master's degree. 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. Although [REDACTED] concludes that the Beneficiary is well qualified to perform the duties of the proffered position, she does not offer a cogent analysis explaining why or how the duties described require the master level coursework referenced to perform the duties of the position. Instead [REDACTED] offers a conclusion that the "specific duties of a Lighting Designer, even at the entry level, are so specialized and complex that the knowledge required to perform these duties depends upon the attainment of a minimum of a Bachelor's Degree in Interior Design, Lighting Design, or a closely related field." [REDACTED] does not offer a persuasive analysis of how or why the duties described require such a degree.

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<sup>8</sup> The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1).

In a subsequent paragraph, [REDACTED] claims that the “basic framework required for the lighting designer position is highly complex, requiring advanced knowledge in using specialized CAD software and environmental analysis software, among other specialized skills.” Ms. Tan does not explain why the use of specialized CAD software and environmental analysis software requires specific coursework or a specific curriculum. [REDACTED] also does not cite authoritative sources that support the conclusory opinion. 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.*

On appeal, the Petitioner asserts that it requires a bachelor’s degree in interior design or related field of study because of the lighting designer’s sophisticated and complex duties. The Petitioner repeats the previously described duties and references various courses in the Beneficiary’s bachelor’s-level degree as providing the education to successfully perform the duties of the proffered position. The Petitioner, however, does not sufficiently and consistently develop the uniqueness, complexity, or specialization aspect of the duties of the proffered position. Although the Petitioner asserts that an applicant for the proffered position must possess a bachelor’s degree in interior design, it does not explain how the bachelor-level courses cited are directly related to the performance of the duties described and required to perform the duties of the proffered position. Rather, the Petitioner repeats the Beneficiary’s courses and does not provide the necessary analysis detailing why or how the duties require these bachelor-level courses. Again, we point out that a Beneficiary’s educational background does not establish that a position is a specialty occupation. The Petitioner must establish that a bachelor’s degree in a specific discipline is required to perform the duties of its specific position.

We understand this is a niche occupation that is related to or is a subset of the “Interior Designer” occupation and we have reviewed the Petitioner’s claim on appeal that the proffered position requires an in-depth understanding of science, art, design, technology, and computer software that can only be attained through a rigorous academic program. However, these general concepts are concepts included in a general bachelor’s degree. There is insufficient probative evidence in the record to show that the duties of this specific position are more specialized, complex, or unique than duties that are not usually associated with at least a bachelor’s degree in a specific specialty, or its equivalent.<sup>9</sup> The Petitioner does not demonstrate how the duties it described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor’s or higher degree in a specific specialty, or its equivalent, is required to perform them. The Petitioner has not satisfied the second prong of the second criterion or the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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<sup>9</sup> We have reviewed the three pages that appear to be the Petitioner’s sample work products submitted. The pages do not include probative evidence or explanation demonstrating that a bachelor’s degree in a specific discipline is required to produce the sample work.



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The Petitioner has not established that more likely than not, the proffered position as described satisfies any of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

#### IV. CONCLUSION

The Petitioner has not established the proffered position is a specialty occupation.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-P-, Inc.*, ID# 1485232 (AAO Aug. 23, 2018)