



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

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

MATTER OF K-, INC.

DATE: AUG. 29, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a company engaged in advanced analytics and big data software engineering, seeks to temporarily employ the Beneficiary as a “senior data scientist” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the California Service Center denied the petition, concluding that the evidence of record does not establish that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred in the decision.

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

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
- (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).

B. Proffered Position

The Petitioner states that the Beneficiary will perform the services of a senior data scientist. The record’s LCA¹ was certified for a position falling within the Standard Occupation Classification (SOC) code and category 15-1199, “Computer Occupations, All Other.”

In the response to the request for evidence (RFE), the Petitioner described the Beneficiary’s duties as follows:

- Lead the team of data scientists (10%)
- Provide the thought leadership and solution design expertise (10%)
- Create data pipelines using big data technologies like Hadoop, spark, etc. (10%)
 - Use these data pipelines to implement domain-specific algorithms

¹ 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).

- For example, these algorithms could be related to processing language, images, etc.
- Create statistical models using distributed and stand alone models to build various diagnostics, predictive and prescriptive solutions (20%)
 - Apply machine learning models to predict outcomes, analyze data, and classify results
- Utilize a broad variety of statistical packaged like Python – (with libraries scikitlearn and pandas), SAS, R, MLIB, Graphs, Hadoop, Spark, Mapreduce, Pig and others (30%)
 - Use additional libraries specific to domain expertise - for e.g. OpenCV for image analysis, and NLTK for text analysis
- Refine and train models based on domain knowledge and customer business objectives (10%)
- Deliver or collaborate on delivering effective visualizations to support the client business objectives (10%)

C. Analysis

1. Variances in Minimum Requirements

We find that the Petitioner has provided inconsistent information regarding the minimum requirements for the proffered position. For instance, in the initial support letter, the Petitioner stated that the minimum requirement for the proffered position is a “bachelor’s degree or a closely related field, or the equivalent.” The Petitioner did not state a bachelor’s degree in a specific specialty. In response the RFE, the Petitioner than stated that the proffered position requires a “Master’s in statistics, preferably a PhD in domains linked to applied statistics, applied physics, artificial intelligence, computer vision, or related fields.” Finally, on appeal, the Petitioner stated that the submitted opinion letter verifies that a “bachelor’s degree in Computer Science, Electronics Engineering, or closely related Computer Science fields, such as Applied Statistics, or the equivalent” is required for the position. The Petitioner did not provide an explanation for these variances.

On appeal, the Petitioner also references a letter from [REDACTED] a professor in the School of Business at the [REDACTED], whereby [REDACTED] indicated that “while the original stated minimum requirement by the petitioner mentions a degree in Applied Statistics, Applied Physics, Artificial Intelligence, or Computer Vision, these are specific categories within or closely relating to the larger field of Computer Science.” However, [REDACTED] does not provide evidence to support this claim. In addition, the Petitioner did not indicate computer science in the initial support letter or in response to the RFE, and mentioned it only on appeal. Thus, it appears that the evidence does not corroborate with [REDACTED] statements. In addition, it appears that the Petitioner allows for a variety of degrees to fill the proffered position.

Even if we consider the Petitioner's requirements to perform the duties of the proffered position, the Petitioner seems to accept a degree in a wide range of disciplines within the broad fields of "statistics" and "engineering" to perform the duties of the proffered position.² 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

A variety of degrees, which appear related only through the basic principles of science and technology is incongruous with a conclusion that the proposed position qualifies as a specialty occupation. That is, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, a requirement that refers to degrees in a wide range of fields, does not establish the position as a specialty occupation. Here, the Petitioner does not sufficiently establish how the broad field of statistics and the similarly broad field of physics are directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty or its equivalent under the Petitioner's own standards.⁴

2. Nature of the Position

A crucial aspect of this matter is whether the record includes sufficiently described duties of the proffered position such that we may discern the nature of the position and whether the position actually requires the theoretical and practical application of a body of a highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. The Petitioner has not provided this evidence.

² The Petitioner references the Beneficiary's educational background and implies that her background demonstrates the proffered position is a specialty occupation. 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 has not established the proffered position is a specialty occupation.

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. However, the evidence must establish how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

⁴ For this reason, we are not persuaded by the Petitioner's citation to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012). We note that a general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field may, in certain instances, qualify the proffered position as a specialty occupation.

The record includes the Petitioner's initial broad overview of the Beneficiary's proposed duties. This general description is insufficient to substantiate that the work is H-1B caliber work and thus eligible for H-1B approval. The job description does not communicate the actual work that the Beneficiary will perform on a day-to-day basis and the correlation between that work and a need for a particular education level of highly specialized knowledge in a specific specialty. Further, the Petitioner did not provide sufficient documentation of the projects in which the Beneficiary will lead and her duties on these specific projects to adequately convey the substantive work to be performed by the Beneficiary.

The Petitioner explained that the Beneficiary will "lead the team of data scientists," and "create data pipelines," and "create statistical models." However, the Petitioner did not provide any specific project that would require these duties. As evidence of the Petitioner's business operations, it submitted documentation regarding different projects or products it is developing. But it did not specifically state that the Beneficiary would work on any of these projects.

On appeal, the Petitioner stated that the "position offered has a major focus on computer vision," and stated that the Beneficiary "works on a projects that involve automated parsing of text and Natural Language Processing." However, the Petitioner did not provide any documentation regarding these projects to understand the Beneficiary's role in the projects, her day-to-day duties, and the duration of the projects.

Further, the Petitioner stated that the Beneficiary will "deliver or collaborate on delivering effective visualizations to support the client business objectives." Thus, it appears that the Beneficiary will be working on projects for clients. However, the Petitioner did not submit any contracts, agreements, work orders or documentation to indicate the relationship and work required for the end-clients. Without these agreements, it is hard to determine the Beneficiary's scope of work.

As observed above, USCIS in this matter must review the actual duties the Beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, USCIS must analyze the actual duties in conjunction with the specific project(s) to which the Beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the Beneficiary is expected to provide.

The Petitioner has not provided sufficient details regarding the nature and scope of the Beneficiary's employment or any substantive evidence regarding the actual work that the Beneficiary would perform. The record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. Because the Petitioner has not established the substantive nature of the Beneficiary's work, we are unable to evaluate whether the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion

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1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

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

II. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of K, Inc.*, ID# 1442478 (AAO Aug. 29, 2018)