



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

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

MATTER OF U-S-, INC.

DATE: JAN. 30, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology, consulting company, seeks to temporarily employ the Beneficiary as a “graphic 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 Director of the California Service Center denied the petition, concluding that the proffered position does not qualify as a specialty occupation. On appeal, the Petitioner asserts that the Director erred.

Upon *de novo* review, we will dismiss the appeal.<sup>1</sup>

**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> We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

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. ANALYSIS

Upon review of the record in its totality, we conclude that the Petitioner has not sufficiently established the substantive nature of the work the Beneficiary would perform during the intended period of employment, which precludes the determination of whether the proffered position qualifies as a specialty occupation.<sup>2</sup>

To establish a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of its business operations, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. Here, the Petitioner did not adequately substantiate its need for a graphic designer for its business.

The Petitioner asserted that it “provides IT consulting and world-class IT solutions to Fortune 500 companies and SMB companies.” The Petitioner enumerated the “services” it provides as

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<sup>2</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. Although we may not discuss every document submitted, we have reviewed and considered each one.

“virtualization; data center and security; cloud-hosted services; networking collaboration; and IT consulting services in server technologies, storage technologies, [u]nified [c]ommunications, WAN, LAN, and WLAN, [p]roduct [l]ifecycle [m]anagement, and [s]erver [c]onsolidation.” The Petitioner indicated that it “continues to expand its business, including its website and software development capabilities” and “as a result, the demand for graphic design has steadily increased, particularly in the development of software interfaces, website development, ERP layout design, and graphics to build brand identity.” The Petitioner further claims that “this growth has outpaced [its] ability to efficiently outsource our graphic design requirements” and that the Beneficiary “is ideally suited to meet our graphic design demands and to improve this area of our operations.”

However, the record does not sufficiently substantiate the Petitioner’s claims regarding its website and software development capabilities or its graphic design demands. As noted, the Petitioner’s services include virtualization, data center and security, and cloud hosted services. The Petitioner does not explain how such services require or increase graphic design demands. Further, although the record contains a printed copy of the Petitioner’s website, stating that its “IT Consulting Services” also include “Custom Application Design,” the record does not discuss the custom applications the Petitioner has designed or include a contract to design a custom application for a client. The record does not contain evidence that the Petitioner has a proprietary software product or is in the process of developing such a product. Lack of information regarding the Petitioner’s business undermines its claims regarding the proffered position.

Similarly, the duties do not adequately convey the substantive work that the Beneficiary will perform. The Petitioner described the proffered position’s duties, and the percentage of the Beneficiary’s time required to perform the duties, as follows:

- Create imagery and landing pages for front-end websites by utilizing HTML & CSS, ECT *[sic]* to improve website appeal and increase user-friendly capabilities which include: Color Convey, Sketch performance and Shooting Script; [30%]
- Apply the latest graphic design tools and technology, such as Adobe Web Premium, Acrobat X Pro to create and design prototypes for websites; [5%]
- Conceptualize layout and implement design solutions for the company’s software applications which includes [a]nimation [m]odeling, three dimensional [a]nimation, [n]onlinear [e]diting, [v]isual [c]ommunication [a]rt, [s]top [m]otion [a]nimation, and [e]arly and [m]iddle [s]tages of the [a]nimation [c]reation; [20%]
- Guide the software development team on improving the visualization of research deliverables, including pattern design applications, human anatomy [l]ine of [a]rt, and others; [15%]
- Research and implement the latest digital and print design technology and trends to create info-graphics for the [c]ompany internally and for the [c]ompany’s external clients; [5%]
- Design and visualize the [c]ompany’s marketing collateral, such as e-mail campaigns, direct mail campaigns, online advertisements by utilizing

Dreamweaver, Flash Builder, Photoshop, Illustrator and Acrobat X Pro, etc.; [15%]

- Carry out additional graphic design duties and projects as assigned. Determine shortfalls and strategize to overcome issues. [10%]

Notably, 30% of the Beneficiary's duties consist of "creat[ing] imagery and landing pages for front-end websites." The record does not establish whether the Beneficiary would work on the Petitioner's website or another entity's website. The duty description contains several references to plural "websites," indicating that the Beneficiary would design graphics for more than one entity but the record does not identify entities that require graphic design services. Although the printed copy of the Petitioner's website bears the logos of 30 other information technology companies described by the Petitioner as "partners" with which the Petitioner works "to provide our customers with the latest and best products and services," the record does not establish the nature of the work the Petitioner performed for or with any of those partners, or the customers who received the unspecified products or services. If the Beneficiary is only working on the Petitioner's website, then the record does not sufficiently demonstrate why such services are needed for the duration of the requested employment period.

The Petitioner asserted that it "has previously contracted with an outside professional for graphic design services" but it chose to hire the Beneficiary to design graphics as an employee. In response to the Director's request for evidence, the Petitioner submitted a copy of the independent contractor agreement and 27 pages of images described as "past contracted graphic design work product, including IT consulting and website development graphic design work." However, the record does not establish that the work product is the Petitioner's contracted graphic design work. The work product does not indicate the name of the company or individual who created the graphic designs. Further, the independent contractor agreement was dated February 2015, but the graphic design work has dates ranging from 2006 to 2015.

Further, 20% of the Beneficiary's duties include "[c]onceptualiz[ing] layout and implement[ing] design solutions for the company's software applications," but as mentioned, the record does not contain information about the Petitioner's software applications, or any other company's software applications. Although the Petitioner enumerates "design solutions" such as "[a]nimation [m]odeling, three dimensional [a]nimation, [n]onlinear [e]diting, [v]isual [c]ommunication [a]rt, [s]top [m]otion [a]nimation, and [e]arly and [m]iddle [s]tages of the [a]nimation [c]reation," since the record does not identify software applications that require design solutions, such technical terms do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application.

In sum, we conclude that the ambiguities and lack of documentation in the record regarding what the Beneficiary would do, and for whom, raise unanswered questions regarding the substantive nature of the proffered position. This precludes a conclusion that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because the substantive nature of the work 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.

### III. CONCLUSION

The Petitioner has not established eligibility for the benefit sought.

**ORDER:** The appeal is dismissed.

Cite as *Matter of U-S-, Inc.*, ID# 1736152 (AAO Jan. 30, 2019)