



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

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

MATTER OF A-S-, INC.

DATE: JAN. 10, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software product development company, seeks to temporarily employ the Beneficiary as a "consultant – quality assurance analyst" 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, California Service Center, denied the petition concluding that the Petitioner had not established that the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director's basis for denial of the petition was erroneous and contends that the evidence of record establishes that the proffered position is a specialty occupation.

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

I. LAW

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). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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).

II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “consultant – quality assurance analyst” at its offices located in Illinois and California. In the letter of support, the Petitioner provided the Beneficiary’s job duties in the proffered position.¹ In addition, the Petitioner stated that the proffered position requires a bachelor’s degree in computer science, engineering, math, or a related field.

In response to the Director’s request for evidence (RFE), the Petitioner provided a revised job description for the position, along with the approximate percentage of time the Beneficiary will spend on each duty:

- Develop, implement and maintain detailed project schedule to coordinate multiple activities
- Requirement gathering, analyzing and understanding
- Identify multiple automation solutions and provide best solution for the problem
- Identify the testing (functional & performance) approach to suit the requirements

¹ We observe that the wording of the duties provided by the Petitioner for the proffered position in the letter of support is taken almost verbatim from the Occupational Information Network (O*NET) OnLine’s list of tasks associated with the occupation category “Software Quality Assurance Engineers and Testers.”

(b)(6)

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- Preparing test plans, estimates, delivery milestones and resource mapping
- Manage risks, issues, quality
- Track and review the progress on daily basis and ensure best practices are followed during development/execution
- Designing framework for automation and performance testing
- Developing automation test scripts for AUT
- Involved in Functional Testing and performing peer reviews for the test automation scripts
- Setup environment for continuous integration and configure workflow
- Analyzing results from continuous integration, finding the root cause for script failures and fixing them
- Provide technical support for production implementation team in deployment and maintenance
- Troubleshooting production issues and verification of fixes
- Facilitate multiple Scrum teams as Scrum Master
- Complete responsibility of all QA deliverables for QA and Processing teams

Roles and Responsibilities

- **Technical – 50%**
 - Analyze the requirements from business as well as technical perspective
 - Develop test management plans for the product release
 - Understand the requirements and create test plans
 - Involved in requirement understanding of new products and provided knowledge transfer to the team
 - Involved in providing technical solutions
 - Core part of the team that build [REDACTED] Test Automation Framework
 - Explore and solve issues identified and provide solutions
- **Project Execution – 5%**
 - Gathering product requirements
 - Creating test management plan for the project
 - Analyzing various risks and coming with appropriate mitigation plan
 - Time estimation for the tasks and getting approval from the respective managers before committing the same to the client
 - Stick to the committed schedule of the assigned tasks
 - Review
- **Project Management – 5%**
 - Managing the project schedule
 - Track and monitor schedule, scope and effort
 - Perform estimation and scheduling
 - Reviewing team work products

- Coordinate/communicate with Project Manager
 - Maintaining process documents
- **Test Automation – 30%**
 - Developed framework for test automation for project
 - Automated around 1500 Test Cases in various projects
- **Quality Assurance – 10%**
 - Develop standards to ensure that quality levels and customer specifications are met without compromise
 - Adhere to the process and standards defined and mentor the team to implement process
 - Work along with the Quality Assurance team to comply with the testing standards of the company
 - Facilitate implementation of [the Petitioner's] Quality Management System in projects

The Petitioner also stated that the position requires a bachelor's degree in computer science, electronics engineering, computer information systems, or a closely related field.

II. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, qualifies as a specialty occupation.² Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.³

As a preliminary matter, we find that the Petitioner has provided inconsistent information regarding the minimum requirements for the proffered position. The Petitioner initially stated that the proffered position requires a bachelor's degree in computer science, engineering, math, or a related field. However, in response to the RFE, the Petitioner stated that the position requires a bachelor's degree in computer science, electronics engineering, computer information systems, or a closely related field. No explanation for these variances in the requirements was provided by the Petitioner.⁴

² In the decision denying the petition, the Director noted that the Petitioner had not established eligibility at the time of filing and noted that the Petitioner did not provide valid, unexpired statements of work or work orders to substantiate that it has sufficient work for the Beneficiary for the requested period of intended employment. We agree with the Director that the record does not establish that there will be sufficient work through the entire requested H-1B validity period for the Beneficiary. Nevertheless, even assuming that the Petitioner had adequately addressed the discrepancy, the petition could not be approved because the Petitioner has not established that the proffered position qualifies as a specialty occupation.

³ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position. While we may not discuss every document submitted, we have reviewed and considered each one.

⁴ “[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*,

Furthermore, the Petitioner's claim that a bachelor's degree in computer science, engineering, math, electronics engineering or computer information systems is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. In general, provided the specialties are closely related, e.g., sales and marketing, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of degrees in disparate fields, such as engineering and math, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the Petitioner establishes how each field is 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.⁵ Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner has not made this showing.

On the basis of the proffered position's educational requirement alone, we cannot find that the proffered position qualifies as a specialty occupation.

We also cannot find that the proffered position qualifies as a specialty occupation, as the Petitioner has not demonstrated that the proffered position satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) for the reasons set out below.⁶

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which 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. To inform this inquiry, we recognize the U.S. 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.⁷

19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

⁵ While the statutory "the" and the regulatory "a" both denote a singular "specialty," 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. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

⁶ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁷ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and

On the labor condition application (LCA)⁸ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Computer Occupations, All Other” corresponding to the Standard Occupational Classification code 15-1199 at a Level I wage.⁹

We note that there are occupational categories which are not covered in detail by the *Handbook*, as well as occupations for which the *Handbook* does not provide any information. The *Handbook* states the following about these occupations:

Although employment for hundreds of occupations is covered in detail in the *Occupational Outlook Handbook*, this page presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2014 employment, the May 2014 median annual wage, the projected employment change and growth rate from 2014 to 2024, and education and training categories are presented.

U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Data for Occupations Not Covered in Detail,” <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited Jan. 4, 2017).

Thus, the narrative of the *Handbook* reports that there are some occupations for which only summary data is prepared but detailed occupational profiles are not developed.¹⁰ The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁸ The Petitioner is required to submit a certified LCA to USCIS 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).

⁹ We will consider the Petitioner’s classification of the proffered position at a Level I wage (the lowest of four assignable wage levels) in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by the DOL 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 he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he 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://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing 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.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

¹⁰ We note that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm and home management advisors; audio-visual and multimedia collections specialists;

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Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies the statutory and regulatory provisions, including this or one of the other three criteria, notwithstanding the absence of the *Handbook's*, support/on the issue. In such cases, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objection, authoritative sources) that indicates whether the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, we will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

In response to the Director's RFE, the Petitioner submitted a letter from [REDACTED]. In his letter, [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position, (2) lists the duties proposed for the Beneficiary, and (3) states that these duties require at least a bachelor's degree in computer science, electronics engineering, computer information systems, or a closely related field. We carefully evaluated [REDACTED] assertions in support of the instant petition but, for the following reasons, we have determined his letter does not have significant weight in this matter.¹¹

First, [REDACTED] expertise, regarding current industry degree requirements for consultants – quality assurance analyst positions is not established in the record. His supporting documentation indicates that most of his experience over the past 30 years has been in an academic setting as a faculty member within a university's school of engineering.

Moreover, [REDACTED] has not provided sufficient information to establish his expertise on the practices of organizations seeking to hire consultants – quality assurance analysts. Without further clarification, it is unclear how his education, training, skills or experience would translate to expertise regarding the current recruiting and hiring practices of an enterprise engaged in "software product development" (as designated by the Petitioner in the petition) or similar organizations for consultants – quality assurance analysts (or parallel positions).

[REDACTED] states that his assessment is based upon a description provided by the Petitioner of the company and the offered position. While [REDACTED] provides a brief, general description of the Petitioner's business activities, he does not demonstrate in-depth knowledge of its operations or how the duties of the position would actually be performed in the context of its business enterprise.

clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

¹¹ It must be noted that [REDACTED] references another individual in his opinion letter. The record provides no explanation for this inconsistency. Thus, we must question the accuracy of [REDACTED] letter and whether the information provided is correctly attributed to this particular position and this Beneficiary.

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Further, [REDACTED] does not mention that the Beneficiary's assignments are not limited to one particular client or project.

Moreover, [REDACTED] opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the Petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. His curriculum vitae does not reflect that he has published any works on the academic/experience requirements for consultants – quality assurance analysts (or related issues).

Even assuming [REDACTED] possessed expertise on the degree requirements for consultants – quality assurance analysts, his opinion letter does not substantiate his conclusions, such that we can conclude that the Petitioner has met its burden of proof. First, [REDACTED] does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation. Second, [REDACTED] does not indicate that he considered, or was even aware of, the fact that the Petitioner submitted an LCA for a Level I, entry-level position. Through this designation, the Petitioner indicated that the position is a comparatively low, entry-level position relative to others within its occupation. We consider this a significant omission, in that it suggests an incomplete review of the position in question and a faulty factual basis for [REDACTED] ultimate conclusion as to the educational requirements of the position upon which he opines.

For the reasons discussed, we find that [REDACTED] opinion letter lends little probative value to the matter here. *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.").

The Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

B. Second Criterion

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[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard industry-wide requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry attesting that such firms “routinely employ and recruit only degreed individuals.” Nor is there any other evidence relevant to this prong. Thus, based upon a complete review of the record of proceeding, we find that the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which 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.

We reviewed the Petitioner’s statements regarding the proffered position; however, in the record of proceedings, the Petitioner does not assert that it satisfies this prong of the second criterion. Further, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Thus, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor’s degree in a specific specialty, or its equivalent, for the position.

Upon review of the record, we find that the Petitioner did not submit information regarding employees who currently or previously held the position. The record does not establish that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

D. Fourth Criterion

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 the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The Petitioner does not establish how the generally described duties of its consultant – quality assurance analyst elevate the proffered position to a specialty occupation. We again refer to our comments regarding the implications of the Petitioner's designation of the proffered position at a Level I wage level.¹²

Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. For the reasons discussed above, the evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

III. 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. The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

¹² The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage-level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

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ORDER: The appeal is dismissed.

Cite as *Matter of A-S-, Inc.*, ID# 163420 (AAO Jan. 10, 2017)