



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

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

In Re: 33405164

Date: SEP. 16, 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

The Act at Section 214(i)(1), 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) the 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) is a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) adds a non-exhaustive list of fields of endeavor to the statutory definition. In addition, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the proffered position must also meet one of the following criteria to qualify as a specialty occupation¹:

- (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.

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 proffered position supporting the statutory definition of specialty occupation. *See also 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”).

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 “advisory manager.” The Petitioner designated the proffered position on the certified labor condition application (LCA) as “Management Analysts” with Standard Occupation Classification (SOC) code 13-1111. The Petitioner states that the position requires a bachelor’s degree or higher in computer science, computer information systems, management information systems, software engineering, or a related field. The Petitioner states that in this proffered position the Beneficiary will:

¹ 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”).

. . . [G]uide clients with development and execution of internal audit plans, including addressing the requirements of SOX;² plan and manage internal audit reviews/projects of business including financial, operational, and compliance; IT processes and infrastructure; and SOX readiness reviews and testing; plan audit approach and scope, prepare audit program, determine auditing procedures to be used, and identify specialists required; review working papers prepared by team; prepare project reports and deliverables and present project results to clients' senior management; apply internal audit standards in planning and executing internal audit reviews/projects; coordinate other engagement activities as necessary, including status reporting to client and issue tracking; build and nurture positive working relationship with client; and identify opportunities to improve engagement profitability.

The Director concluded that the position does not qualify as a specialty occupation under any of the four regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The Petitioner asserts on appeal that the position qualifies as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the entire record, and for the reasons set out below, we conclude that the Petitioner has not established that the services the Beneficiary will perform qualify as a specialty occupation under sections 101(a)(15)(H)(i)(b) and 214(i)(1) of the Act or 8 C.F.R. § 214.2(h)(4)(i)(A)(1), (4)(ii), and (4)(iii)(A). Specifically, the record does not sufficiently establish how the stated educational requirement for the position relates to the job duties.

The Petitioner does not assert on appeal that the position qualifies as a specialty occupation under the first criterion, first prong of the second criterion, or the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). We therefore consider the claim that the position qualifies under any of those criteria to be waived, and consider only the second prong of the second criterion and the fourth criterion below. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

The second criterion presents two, alternative prongs: “[t]he 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 concentrates upon the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position. The second alternative of the prong is satisfied if a petitioner establishes 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)(4) 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.

² The Petitioner uses “SOX” to refer to the Sarbanes-Oxley Act of 2002, which relates to financial disclosures and combatting corporate and accounting fraud in public companies.

The Petitioner states that this is a highly complex position located within its “Accounting & Internal – IT & Specialized Assurance” division. The Petitioner contends that it has outlined the intricate, complex duties and responsibilities of the position with its initial position description, expanded position description, and the opinion letter submitted. Additionally, the Petitioner submits new evidence on appeal that it asserts establishes that the position is a specialty occupation under these criteria.

Upon review of the totality of the record, we conclude that the record does not sufficiently establish that the position or its constituent duties are so “complex or unique” or “specialized and complex” that a bachelor’s degree in computer science, computer information systems, management information systems, software engineering, or a related field, is required. When determining whether a position is a specialty occupation, we look to the record to see if the proffered position requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor’s degree in a specific specialty.

First, we conclude that the opinion letter that the Petitioner discusses on appeal is not sufficiently persuasive. The opinion letter is authored by Professor [REDACTED] a professor of computer and information science at [REDACTED]. In this letter, the professor (1) describes the credentials that the professor asserts qualifies them to opine on the nature of the proffered position and (2) states the opinion that the position qualifies as a specialty occupation. However, the professor does not establish why the job duties are “complex or unique” or “specialized and complex” such that they require at least a bachelor’s degree in computer science, information systems, information technology, or a related field. Although the professor states the conclusion that the position’s duties are “technical and quantitative” and that the responsibilities of the position are “highly specific, technical, and quantitative,” the professor does not sufficiently establish that the position is so specialized and complex as to require a bachelor’s or higher degree in one of the listed fields.

For example, the professor characterizes the position several times as involving or relating to “business and sales development, IT assessment and management, auditing and assurance, risk analysis and mitigation, controls analysis and regulatory compliance, audit reporting, and project and team management” and asserts that this is the basis for the degree requirement. However, the professor does not explain how the fields of computer science, computer information systems, or information technology, relate to business and sales development, auditing and assurance, regulatory compliance, or project and team management. We also note that, while the Petitioner does describe the position as involving auditing and assurance, it does not describe the position as relating to “business and sales development.”

The professor states that the fields of computer science, information systems, information technology, or a related field are required for the proffered position because in these fields, students complete coursework in “business analytics, operations management, data analysis, technology management, strategic planning, data modeling, predictive analytics, solution development, organizational leadership, project management, systems design, and related subjects.” However, even if this is knowledge that may be gained through one of these degree programs, the professor does not sufficiently relate this knowledge to the Petitioner’s proffered position which appears to primarily involve such duties as providing audit, assurance, and advisory services, delivering SOC reports for

financial audits, and planning and executing internal audits related to “financial, operational, and compliance” issues.

Additionally, opinion letter does not sufficiently establish that the duties that include the use of technology tools is so specialized and complex or unique as to require at least a bachelor’s degree in a specific specialty or its equivalent. Although the job description states, for example, that one of the job duties requires using “project quality management tools” such as “Microsoft Project, Excel Macro and VB,” and another job duty includes the use of “Oracle, SQL, Windows, and UNIX,” the professor does not explain why the skills needed to use these tools could not be gained through certifications or other trainings, and would require at least a bachelor’s degree in a specific specialty or its equivalent. The Petitioner also makes little effort to explain why the use of these technologies makes the position “complex or unique” or “specialized and complex.”

The same is true for the many duties which relate to specific areas of regulatory compliance. For example, the position’s duties relate to advising clients on “SOX Readiness Analysis” and using and applying knowledge of PCAOB guidance, SEC regulations, and AICPA assurance frameworks.³ The Petitioner has not demonstrated that a degree in a field such as computer science or information technology would be required to attain the knowledge needed to perform duties related to advising clients on these types of auditing and financial compliance issues. The opinion letter also does not address this issue.

As a matter of discretion, we may 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, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, because the professor’s opinions are not sufficiently supported and not in accord with the other information in the record, we conclude the opinion letter is of little probative value.

Next, as stated above, the Petitioner has also submitted additional evidence for the first time on appeal. Specifically, the Petitioner submits a new credential equivalency evaluation for the Beneficiary, a new opinion letter regarding the position, evidence of the Beneficiary’s work product, and another expanded position description. In most cases, our decision is limited to the evidence in the record at the time of the decision. When new evidence is submitted on appeal, we apply the framework under *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988) and *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988) to determine whether we will consider the evidence in our decision. Under this framework, we consider whether the affected party was put on notice of an evidentiary requirement, whether the affected party was given a reasonable opportunity to provide the evidence, and whether the evidence was reasonably available to the affected party at the time it was supposed to have been submitted. *See id.* Here, the Petitioner was put on notice of the evidentiary requirement, was given a reasonable opportunity to provide the evidence, and has not demonstrated that any of the new evidence

³ Although the Petitioner does not define the acronyms used in its job description, we note that “AICPA” stands for the American Institute of Certified Public Accountants and “PCAOB” stands for the Public Company Accounting Oversight Board, a non-profit corporation created by the Sarbanes-Oxley Act of 2002.

was previously unavailable. Under *Matter of Soriano* and *Matter of Obaighena*, we therefore will not consider the Petitioner's additional evidence submitted for the first time on appeal.⁴

Considering the above, the Petitioner did not sufficiently develop relative specialization and complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so specialized and complex or unique to require a bachelor's or higher degree in computer science, computer information systems, management information systems, software engineering, or a related field. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 is a specialty occupation. Moreover, the record does not establish that the Petitioner satisfied the statutory and regulatory definitions of specialty occupation.

III. CONCLUSION

As set forth above, we conclude that the evidence of record does not establish, more likely than not, that the proffered position qualifies for classification as a specialty occupation. Accordingly, 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. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

⁴ We also note that the new credential equivalency evaluation submitted is not relevant to the issue on appeal of whether the position qualifies as a specialty occupation. Additionally, were we to consider the Petitioner's expanded position description submitted on appeal, we would conclude that it detracts from its claim that the position is a specialty occupation. The expanded position description lists the Beneficiary's specific training and experience that corresponds to specific position duties. However, generally, whether a particular beneficiary's education, training, or experience relates to a proffered position does not necessarily demonstrate that the duties of the proffered position *actually require* the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree or higher in a specific specialty. But moreover, in this instance, the document shows that the Beneficiary's primary preparation for the position is possessing a "Certified Information Systems Auditor" (CISA) certification, a "Certified Payment Industry Security Implementer" (CPISI) certification, and work experience. Therefore, the document is not helpful in demonstrating that a bachelor's or higher degree in a specific specialty is required for the position.