



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

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

In Re: 32803092

Date: SEPT. 16, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (H-1B)

The Petitioner seeks to 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 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 the record did not establish the Petitioner's proffered job qualified as a specialty occupation under section 101(a)(15)(H)(i)(b) of the Act. 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. And the regulation at 8 C.F.R. § 214.2(h)(4)(iii) requires that the proffered position must also 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.

The statute and the regulations must be read together to make sure that the proffered position meets the definition of a specialty occupation. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Fed. Sav. And Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). Considering the statute and the regulations separately leads to scenarios where a Petitioner satisfies a regulatory factor but not the definition of specialty occupation contained in the statute. *See Defensor v. Meissner*, 201 F.3d 384, 387 5<sup>th</sup> Cir. 2000). The regulatory criteria read together with the statute gives effect to the statutory intent. *See Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act*, 56 Fed. Reg. 61111, 61112 Dec. 2, 1991).

So, we construe the term “degree” in 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 proffered position supporting the statutory definition of specialty occupation. *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”). USCIS’ application of this standard has resulted in the orderly approval of H-1B petitions for engineers, accountants, information technology professionals and other occupations, commensurate with what Congress intended when it created the H-1B category.

And job title or broad occupational category alone does not determine whether a particular job is a specialty occupation under the regulations and statute. The nature of the Petitioner’s business operations along with the specific duties of the proffered job are also considered. We must evaluate the employment of the individual and determine whether the position qualifies as a specialty occupation. *See Defensor*, 201 F.3d 384. So, a Petitioner’s self-imposed requirements are not as critical as whether the position the Petitioner offers requires the application of a theoretical and practical body of knowledge gained after earning the required baccalaureate or higher degree in the specific specialty required to accomplish the duties of the job.

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

### A. General Degree Requirement

The Petitioner is offering the Beneficiary the position of creative operations associate. The petition included a labor condition application (LCA) certified for a position located within the “Market Research Analysts and Marketing Specialists” occupational category corresponding to the Standard Occupational Classification code 13-1161.<sup>1</sup>

The Petitioner stated in its support letter that the creative operations associate position requires a bachelor’s degree in design, business administration, or related field, and progressive experience. In its response to the Director’s request for additional evidence (RFE), the Petitioner submitted a supplemental support letter with an expanded job description, reference information about the occupation, sample business administration curriculum from [REDACTED] copy of case law precedent the Petitioner cited to in support of its contentions, an academic evaluation and transcripts supporting the Beneficiary’s educational qualifications, and information about the Petitioner’s position in the art and design industry to establish that the proffered position met all four of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>2</sup>

The proffered position does not meet the statutory or regulatory definition of the term “specialty occupation.” The Petitioner has not satisfied the requirement that the proffered position require the theoretical and practical application of a body of specialized knowledge and that the position requires attainment of a bachelor’s degree in the specific specialty to perform the job duties.

The record of proceedings contains the Petitioner’s stated requirements for the proffered position. The Petitioner would accept a bachelor’s degree in business administration, with no further specialization, as a minimum qualification for entry into the proffered position. If a position is a “specialty occupation” under the statute and regulations, it is one which involves a “body of highly specialized knowledge” attained after completing a bachelor’s degree or higher in a “specific specialty.” A general degree requirement like a bachelor’s degree in business administration, standing alone without any further specialization, is not a specialty. And this excludes any proffered position accepting such a degree as a minimum requirement for entry into the position from consideration as a specialty

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<sup>1</sup> The Petitioner asserted “USCIS failed to fulfill its legal obligation outlined in the class action final settlement agreement in *MadKudu Inc., et al. v. U.S. Citizenship and Immigration Services, et al.*, No. 20-cv-2653 (N.D. Cal.)” We do not agree. The settlement agreement outlined guidance for adjudicating pending or future H-1B petitions for market research analysts. The Petitioner contends USCIS is bound by the settlement agreement to approve petitions filed for market research analysts. But, as mentioned in the Petitioner’s brief, the guidance states a position whose employer “would consider someone as qualified for the position based on less than a bachelor’s degree in a specialized field directly related to the position (e.g., an associate’s degree, **a bachelor’s degree in a generalized field of study without a minor, major concentration, or specialization in market research, marketing, or research methods**, or a bachelor’s degree in a field of study unrelated to the position)” would not meet the statutory and regulatory definitions of specialty occupation at 8 U.S.C. § 1184(i)(1) and 8 C.F.R. § 214.2(h)(4)(ii) (emphasis added). So, contrary to the Petitioner’s assertion, USCIS fulfilled the settlement agreement when it denied the petition because the Petitioner’s minimum qualifications for entry to their creative operations associate position contained a requirement for a general bachelor’s degree in business administration without specialization.

<sup>2</sup> While we may not discuss every document submitted, we have reviewed and considered each one.

occupation. A bachelor's degree in business administration without further specialization is so broad that it could apply to a position in finance as well as general business operations and management in a variety of endeavors. So, it cannot provide an individual with the "body of highly specialized knowledge" required to perform the duties of a specialty occupation.

In accordance with the statutory and regulatory requirements, the agency has consistently disfavored general purpose bachelor's degrees in business administration with no additional specialization. *See Matter of Ling*, 13 I&N Dec. 35 (Reg'l Comm'r 1968); *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm'r 1988); *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988). Even after Congress revamped the H-1B program as part of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, the agency's concerns with a general-purpose bachelor's degree in business administration with no additional specialization continued. *See e.g. Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151 (D. Minn. 1999); *2233 Paradise Road, LLC v. Cissna*, No. 17-cv-01018-APG-VCF, 2018 WL 3312967 (D. Nev., July 3, 2018); *XiaoTong Liu v. Baran*, No. 18-00376-JVS, 2018 WL 7348851 (C.D. Cal., Dec. 21, 2018); *Parzenn Partners v. Baran*, No. 19-cv-11515-ADB, 2019 WL 6130678 (D. Mass., Nov. 19, 2019); *Xpress Group v. Cuccinelli*, No. 3:20-CV-00568-DSC, 2022 WL 433482 (W.D.N.C. Feb. 10, 2022).

As the First Circuit Court of Appeals explained in *Royal Siam*, 484 F.3d at 147:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify granting of a petition for an H-1B specialty occupation visa. *See e.g., Tapis Int'l v. INS*, 94 F. Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F.Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

A bachelor's degree in business administration with no further specialization is not a degree in a specific specialty. And the fact that the Petitioner would accept such a degree as a minimum qualification for entry to the proffered position does not satisfy the statutory and regulatory definitions of specialty occupation.

#### B. Wide and Disparate Acceptable Degree Field Range

Even if we were to leave to the side the dispositive issue of the Petitioner's acceptance of a business administration degree with no further specialization, we would still conclude that the Petitioner's acceptance of a bachelor's degree from the wide variety of fields it specifies would preclude the Petitioner from satisfying both the statutory and regulatory definition of specialty occupation. The record of proceedings reflects that along with a bachelor's degree in business administration with no further specialization, the Petitioner would also accept a bachelor's degrees in design for entry into the proffered job.

The Director correctly concluded the range covered by the design and business administration fields of study to be too wide and denied the petition. The Petitioner's grouping of business administration with no further specialization in combination with design is not adequately supported in the record with evidence highlighting its composition as collectively forming a singular specialty in a body of highly specialized knowledge. The Petitioner asserts the H-1B regulations require "only that a bachelor's degree is 'normally' the minimum requirement for entry" to the proffered job. This is not correct. The Petitioner's diverse grouping of the field of design and business administration together constitutes a broad range of knowledge that the record does not adequately establish as a specialty required to perform the duties of a "specialty occupation." When the theoretical and practical knowledge desired for a proffered job can be gained from a number of seemingly unrelated degrees, spanning from humanities such as "design" to "business administration" the only conclusion can be that these skills are fundamental and not specialized. In fact, unrelated specialties would fall within the Petitioner's minimum educational requirements of a bachelor's in design or business administration or related field. This leads to the scenario the Petitioner advances wherefrom the Petitioner could advance any proffered position as a specialty occupation so long as it required at minimum an individual with any bachelor's degree. But such a position cannot be considered specialized. *See Caremax v. Holder*, 40 F.Supp.3d 1182, 1187-88 (N.D. Cal. 2014) ("A position that requires applicants to have any bachelor's degree, or a bachelor's degree in a large subset of field, can hardly be considered specialized."). The record as it is presently composed does not establish how the range of degrees the Petitioner could accept as a minimum qualification for entry to the proffered job would form a body of highly specialized knowledge or a specific specialty.

On appeal, the Petitioner contends that the Director applied an incorrect legal standard when they denied the petition. In its appeal, the Petitioner states that its wide range of degrees can constitute a specialty required to perform the duties of a specialty occupation. The Petitioner cites to caselaw in *Caremax v. Holder*, 40 F.Supp.3d 1182, 1187-88 (N.D. Cal. 2014), *Tapis Int'l v. INS*, 94 F. Supp.2d 172, 175-76 (D. Mass. 2000), and *Raj & Co. v. USCIS*, 85 F. Supp. 3d 1241 (W.D. Wash. 2015) and states "there is nothing in the INA nor the specific code of regulations describing the H-1B program to require that a baccalaureate level of education be in one specific discipline to satisfy the "specialty occupation standard." The Petitioner's arguments are not persuasive. The issue here is not that the Petitioner would accept degrees in various fields. The issue today is that the Petitioner's stated spectrum of acceptable degrees is too broad to support a finding that the proffered position requires a bachelor's degree in a specific specialty, or the equivalent. We interpret the statutory "the" and the regulatory "a" to mean a singular specialty but we do not so narrowly interpret the statute and regulation such that multiple closely related fields of study would not constitute a specialty to perform the duties of a related specialty occupation. In general, 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 provided the specialties are closely related such that they constitute a common specialty required to perform the duties of the position. If they constitute a common specialty, then the required "body of highly specialized knowledge" would essentially be the same. If the required degree fields do not constitute a common specialty, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be "in the specific specialty (or its equivalent)." A minimum entry requirement that did include disparate fields of study, such as philosophy and engineering for example, would require a petitioner to establish how each field is directly related to all the duties and responsibilities of the particular position. Section 214(i)(1)(B) of the Act (emphasis added).

So, there is no requirement in the statute for the required education to consist of one specific degree or major but there must be a close relation between the required specialized studies to constitute a common “specialty” and that “specialty” must be related to the duties of the position as supported by the case law cited by the Petitioner in its appeal. When a petitioner would accept a bachelor’s degree from a wide variety of seemingly unconnected fields, like the range of fields the Petitioner presents here, it cannot establish that the fields constitute a “specialty” if it does not establish how each accepted and specific field of study is directly related to each another and to the duties and responsibilities of the particular position. The record as it is currently constituted does not support a conclusion that the Petitioner’s group of degree-fields is sufficiently narrow to conclude that it comprises a “specialty” required to perform the duties of the “specialty occupation.”

### C. The Petitioner’s Assertions on Appeal

The Petitioner also asserts on appeal that the nature of its proffered position is “complex” and that the “Director failed to meet the agency’s adjudicatory burden” when they denied the petition. The Petitioner further asserts it normally requires a bachelor’s degree or higher in a specific specialty or its equivalent. The record contains the Department of Labor’s *Occupational Outlook Handbook (Handbook)* to support the Petitioner’s assertion that its proffered position requires a bachelor’s degree in a specific field of study comprising a body of specialized knowledge or a specialty required to perform the duties of the position. The Petitioner also contends its representations in the supplemental letter it submitted in response to the Director’s RFE satisfies its burden to demonstrate its proffered creative operations associate position is a specialty occupation. But, as we discuss below, the supplemental criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4) cannot be satisfied without the express requirement of a baccalaureate or higher degree providing the theoretical and practical application of a body of highly specialized knowledge.

The Petitioner contends the proffered creative operations associate position is complex based on their status in their field of operations, the business initiatives they intend to undertake, and the Beneficiary’s academic background. The Petitioner further states the “specialized and complex” nature of the proffered position is “evidenced by the description of the job duties” it provided in the supplemental letter in response to the Director’s RFE. But the expanded duties are not so specialized and complex that they would require the application of a theoretical and practical body of highly specialized knowledge gained after earning a bachelor’s degree in a specific specialty to perform them. The Petitioner discusses the duties of the proffered creative operations associate at length and summarily identifies the duties as specialized and complex. The Petitioner states that the duties of the proffered creative operations associate are specialized and complex because [redacted] is a distinguished design service company” aiming to “become the leading expert in the tech, art, design, and marketing industry” by “expanding into the Non-Fungible Token Market (“NFT”) by making tools for creators.” But a meditative repetition of the terms “complex” or “specialized” does not convincingly establish that the performance of those duties requires the theoretical and practical application of a body of specialized knowledge attained after earning a bachelor’s or higher degree in a specific specialty related to the job duties. And the Petitioner does not explain why the duties of a creative operations associate are specialized and complex when they are performed in furtherance of “expanding into the Non-Fungible Token Market (“NFT”).” The evidence in the record does not sufficiently demonstrate how duties related to the “communication and management of the company’s

brand and image” and “networking tools, public relations knowledge, office software, and management of social media platforms” in support of new business opportunities in the non-fungible token market are specialized and complex. And the Petitioner’s self-identification as a “distinguished design service company” is not sufficient to elevate their proffered creative operations associate position to that of a specialty occupation. The Petitioner has not provided evidence demonstrating how their “distinguished” status establishes the specialized and complex nature of its creative operations associate’s duties such that the duties can only be performed by a person with a bachelor’s degree in a specific related specialty.

Finally, the Petitioner asserts on appeal that its requirement of “a bachelor’s degree in Design, Business Administration, or a related field” is “consistent with and matches” the educational and experiential requirement for market research analysts and marketing specialists contained in the *Handbook*. The *Handbook* is only one source that can be used to assist in demonstrating a particular occupation may be a specialty occupation. The Petitioner may present other sources to establish that a specific degree is normally the minimum requirement for entry into the position or may establish that its particular position requires a bachelor’s level, or other, degree in a specific discipline or fields of disciplines constituting a specialty containing the theoretical or practical body of specialized knowledge required to perform the duties of the position. But the Petitioner here has not submitted sufficient evidence regarding its particular position to satisfy the requirements necessary to establish the position is a specialty occupation.<sup>3</sup>

Without the express requirement of a baccalaureate or higher degree providing the theoretical and practical application of a body of highly specialized knowledge, the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4) cannot be satisfied. The supplemental regulatory criteria are read together within the related regulations and the statute as a whole. So, where the regulations refer to the term “degree,” we interpret that term to mean a baccalaureate or higher degree in a specific specialty related to the proffered position. *See Royal Siam*, 484 F.3d at 147. The word “degree” is mentioned in each prong of the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4). And where, as here, a baccalaureate or higher degree in a specific specialty is not required as a minimum requirement of entry, it follows that each prong under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4) remains unsatisfied. So, we will not consider the Petitioner’s arguments and the evidence it submits in support of its contention that it satisfies the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4).

Whilst we held in *Chawathe* that the standard of proof in immigration proceedings is the preponderance of the evidence, the burden of proof is always on the petitioner. A petitioner’s burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *see also* the definition of burden of proof from *Black’s Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). A petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres the governing statutory, regulatory, and policy provisions

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<sup>3</sup> Moreover, the Petitioner’s inclusion of a bachelor’s degree in business administration without specialization renders its proffered position statutorily ineligible for classification as a specialty occupation, mooted further analysis of the proffered position under the supplemental criteria contained at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4).

sufficient to have the issue decided on the merits. When, as here, a petitioner has not met the burden of persuasion by a preponderance of the evidence because its evidence is not material, relevant, or probative it follows that it has not demonstrated eligibility for the benefit that they seek.

We conclude that the proffered position here is not a specialty occupation. The record of proceedings does not establish that the proffered position requires both: (1) the theoretical and practical application of a body of highly specialized knowledge; and (2) the attainment of a bachelor's degree in the specific specialty. The Petitioner has satisfied neither the statutory definition of a "specialty occupation" at section 214(i)(1)(B) of the Act nor the regulatory definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(ii). As the Petitioner had not satisfied that threshold requirements, it cannot satisfy any of the supplemental specialty-occupation criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4). The Petitioner has not established that the proffered position is a specialty occupation.

### III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the 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.