



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

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

In Re: 21166521

Date: APR. 6, 2022

Appeal of Vermont Service Center Decision

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

The Petitioner, a meat processing company, seeks to temporarily employ the Beneficiary as an “operations management associate” under the H-1B nonimmigrant classification for specialty occupations. 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 Vermont Service Center denied the petition, concluding that the record does not establish that the proffered position qualifies as a specialty occupation. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *See 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. LEGAL FRAMEWORK**

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . . ” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires “theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(1) of the Act, but adds a non-exhaustive list of fields of endeavor. In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the proffered position must meet one of four criteria to qualify as a specialty occupation position.<sup>1</sup> Lastly,

---

<sup>1</sup> 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*

8 C.F.R. § 214.2(h)(4)(i)(A)(1) states that an H-1B classification may be granted to a foreign national who “will perform services in a specialty occupation . . .” (emphasis added).

Accordingly, to determine whether the Beneficiary will be employed in a specialty occupation, we look to the record to ascertain the services the Beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor’s degree or higher in a specific specialty or its equivalent. Without sufficient evidence regarding the duties the Beneficiary will perform, we are unable to determine whether the Beneficiary will be employed in an occupation that meets the statutory and regulatory definitions of a specialty occupation and a position that also satisfies at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The services the Beneficiary will perform in the position determine: (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 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. 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

Upon review of the record in its totality and for the reasons set out below, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, we conclude that the record (1) does not describe the position’s duties and requirements with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup> In particular, we conclude that the Petitioner has not established the substantive nature of the position, which precludes a determination that the proffered position qualifies as a specialty occupation under at least one of the four regulatory specialty-occupation criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).

An important aspect of this matter is whether the Petitioner has sufficiently described the 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 highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. When determining whether a position is a specialty occupation, we look at the nature of the business offering the employment and the

---

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”).

<sup>2</sup> 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.

description of the specific duties of the position as it relates to the performance of those duties within the context of that particular employer's business operations.

On the labor condition application (LCA)<sup>3</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position as a part-time position with a Level II wage under the occupational category "Operations Research Analysts" corresponding to the standard occupational classification (SOC) code 15-2031 from the DOL's Occupational Information Network (O\*NET).

First, to determine whether the SOC code identified corresponds to the duties of the proffered position, we reviewed information about this occupation found in the O\*NET summary report. According to O\*NET's description, positions located within the "Operations Research Analysts" occupational category "[f]ormulate and apply mathematical modeling and other optimizing methods to develop and interpret information that assists management with decision making, policy formulation, or other managerial functions."<sup>4</sup> O\*NET further states that operations research analysts "[m]ay collect and analyze data and develop decision support software, services or products."<sup>5</sup> In comparison, according to O\*NET's description of the "General and Operations Managers" corresponding to the SOC code 11-1021, positions located within this occupational category "[p]lan, direct, or coordinate the operations of . . . organizations, overseeing multiple departments or locations."<sup>6</sup> Among the duties of this occupational category, O\*NET lists "formulating policies, managing daily operations, and planning the use of materials and human resources" and "[d]irect or coordinate financial or budget activities to fund operations, maximize investments, or increase efficiency."<sup>7</sup> In other words, while operations research analysts collect and analyze data in a systematic manner to assist management to improve organizational operations, general and operations managers utilize the information provided by the operations research analysts to make operational decisions. The majority of the job duties proposed here appear to be more closely aligned with the duties of the "General and Operations Managers" occupational category rather than the duties of "Operations Research Analysts." For example, the Petitioner stated that the Beneficiary will "[r]eview company policies, workflow from sale to shipping and the whole business process. After evaluation, make recommendations for business performance and business strategy improvement;" "[r]eview all employees' job descriptions and responsibilities. Enhance workflow by creating and assigning clearly defined jobs;" "[o]ffer direction to staff in all aspects of operations, service and client care;" "[w]ork cross functionally to support departmental leadership and proactively collaborate, influence, and align the company's short/long-term objectives;" and "[c]ollaborate with the sales, production, receiving and maintenance team to improve cost-effectiveness across all platforms." These duties appear to be more focused on the overall management of the company which are more aligned with the duties of general and operations managers rather than the duties of operations research analysts, which focus on gathering

---

<sup>3</sup> A petitioner submits the LCA to the U.S. Department of Labor (DOL) 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 duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

<sup>4</sup> O\*NET Summary Report for "Operations Research Analysts," <https://www.onetonline.org/link/summary/15-2031.00> (last visited Apr. 6, 2022).

<sup>5</sup> Id.

<sup>6</sup> See O\*NET Summary Report for "General and Operations Managers" at <https://www.onetonline.org/link/summary/11-1021.00> (last visited Apr. 6, 2022).

<sup>7</sup> Id.

and analyzing data of the business operations through mathematical modeling to improve a company's operations and managerial functions.

Moreover, in its response to the Director's request for evidence (RFE), the Petitioner asserted that the "'Operations Managers' are grouped under the 'Top Executives' umbrella" and quoted an excerpt from the DOL's Occupational Outlook Handbook (Handbook) stating, "[i]n some organizations, the tasks of chief executive officers may overlap with those of general and operations managers."<sup>8</sup> On appeal, the Petitioner asserts that the duties of the proffered position are closely aligned with both the duties of top executives and the duties of operations research analysts. Where multiple SOC codes correspond with the duties of a proffered position, the SOC code with the higher prevailing wage should be selected.<sup>9</sup> Notably, at the time the Petitioner's LCA was certified, the Level II prevailing wage in the area of intended employment for "General and Operations Managers" was \$49.02 per hour (or \$101,962 per year),<sup>10</sup> which is higher than the prevailing wage for "Operations Research Analysts," which was \$36.04 per hour (or \$74,963 per year).<sup>11</sup> The online wage library does not provide a specific wage information corresponding to wage levels for "Chief Executives;" however, it states that the "wage data may be at least: \$100.00 hour, \$208,000 year."<sup>12</sup> As such, the attested wage rate of \$36.04 per hour on the Form I-129 would fall below that required by law at that time for the proffered position of operations management associate. Such a wage disparity highlights the difference between the "Operations Research Analysts," "General and Operations Managers" and "Chief Executive" occupational categories generally, and more specific to this case, the significance of the Petitioner's choice of the lower paying occupational category. However, the record does not include clarifying information or evidence distinguishing the proffered position from the higher paying occupations.

---

<sup>8</sup> In support of its assertion, the Petitioner submitted a printout for "Top Executives" summary contained in Handbook. Information contained in the Handbook may be accessed at the Internet site <http://www.bls.gov/ooh/>.

<sup>9</sup> We observe that if a position is a combination of two different, but related occupations, the higher paying SOC code must be on the LCA. See U.S. Dep't of Labor, Emp't & Training Admin., Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.flcdatacenter.com/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.flcdatacenter.com/pdf/NPWHC_Guidance_Revised_11_2009.pdf). To permit otherwise may result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A), by allowing that petitioner to submit an LCA for a different occupation and at a lower prevailing wage than the one being petitioned for. The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). See Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-56) (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]."). According to section 212(n)(1)(A) of the Act, an employer must attest that it will pay a holder of an H-1B visa the higher of the prevailing wage in the "area of employment" or the amount paid to other employees with similar experience and qualifications who are performing the same services. See 20 C.F.R. § 655.731(a); Venkatraman v. REI Sys., Inc., 417 F.3d 418, 422 & n.3 (4th Cir. 2005); Patel v. Boghra, 369 F. App'x 722, 723 (7th Cir. 2010); Michal Vojtisek-Lom & Adm'r Wage & Hour Div. v. Clean Air Tech. Int'l, Inc., No. 07-97, 2009 WL 2371236, at \*8 (Dep't of Labor Admin. Rev. Bd. July 30, 2009).

<sup>10</sup> See FLC Data Center Online Wage Library for "General and Operations Managers," SOC code 11-1021 at [https://www.flcdatacenter.com/OesQuickResults.aspx?code=11-1021&area=\[ \]&year=20&source=1](https://www.flcdatacenter.com/OesQuickResults.aspx?code=11-1021&area=[ ]&year=20&source=1) (last visited Apr. 6, 2022).

<sup>11</sup> See FLC Data Center Online Wage Library for "Operations Research Analyst," SOC code 15-2031 at [https://www.flcdatacenter.com/OesQuickResults.aspx?code=15-2031&area=\[ \]&year=20&source=1](https://www.flcdatacenter.com/OesQuickResults.aspx?code=15-2031&area=[ ]&year=20&source=1) (last visited Apr. 6, 2022).

<sup>12</sup> See FLC Data Center Online Wage Library for "Chief Executives," SOC code 11-1011 at [https://www.flcdatacenter.com/OesQuickResults.aspx?code=11-1011&area=\[ \]&year=20&source=1](https://www.flcdatacenter.com/OesQuickResults.aspx?code=11-1011&area=[ ]&year=20&source=1) (last visited Apr. 6, 2022).

Due to this lack of clarity in the description of the proposed duties, we cannot determine whether the Petitioner properly categorized the proffered position on the LCA.

On appeal, the Petitioner provides additional explanations for the duties. However, upon review of the proposed duties and the additional details provided on appeal, we conclude that they do not provide sufficient detail 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. For example, the Petitioner states that the Beneficiary will spend 80% of his time on “[r]eview[ing] company policies, workflow from sale to shipping and the whole business process” and “mak[ing] recommendations for business performance and business strategy improvement.” On appeal, in the “Additional Explanation” section for this duty, the Petitioner states that the Beneficiary “must gather information and data regarding different operating facets of the business such as sales . . . , purchasing . . . , logistics . . . , arranging the logistics to ship the product . . . , obtaining/and gathering reports of delivery to customers, tracking problems with the shipments, ensuring payments are received[,] etc.” The Petitioner adds, “[m]etrics have to be in place to be able to accurately evaluate the true cost of delivering the products to the customer in order to determine if the company is charging enough money for their product.” The Petitioner explains that “waste/spoilage” and unproductive workforce are significant causes of loss and that without accurate data, it would be “impossible to know the health of the company.”<sup>13</sup> While the additional explanation provided on appeal gives more insight into the Petitioner operations, it does not contain the necessary detail for us to ascertain whether the duties of the proffered position require at least a baccalaureate degree in a specific specialty, or its equivalent in order to perform them. For example, the Petitioner states that the Beneficiary must gather information and data; however, it does not elaborate on the methods and the techniques the Beneficiary will utilize in gathering such data and does not explain why the knowledge and skills necessary to perform these tasks should be equivalent to a bachelor’s degree or higher in a specific specialty and cannot be gained through other means such as certificate programs or on-the-job training. The Petitioner lists courses taken by the Beneficiary, which it claims are essential to the performance of a corresponding proposed duty. However, such a generalized description of the duties does not establish a necessary correlation between the proffered position and a need for a particular level of education, or its equivalency, in a body of highly specialized knowledge in a specific specialty. While the position may require that the Beneficiary possess some skills and technical knowledge in order to perform these duties, the Petitioner has not sufficiently explained how these tasks require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. Without a detailed and more precise description, the record does not establish that the proposed duties require the theoretical and practical application of highly specialized knowledge and attainment of at least a bachelor’s degree in a specific specialty or its equivalent.

We also reviewed the position evaluation prepared by [REDACTED], a professor at [REDACTED] University, to assist in understanding the nature of the proffered position. Significantly, the professor does not discuss the Petitioner’s business operations and the proposed duties in a manner sufficient to establish the scope and complexity of the Beneficiary’s job duties. Rather, [REDACTED] lists the duties that the Petitioner provided and concludes, without analysis, that the job duties are “complex” and require “the theoretical and practical application of an advanced, highly specialized

---

<sup>13</sup> For the sake of brevity, we will not discuss the additional explanations provided for each duty. However, we have closely reviewed and considered them.

body of knowledge in the field of Business Management, Operations Management, or related fields.” Offering conclusory statements is insufficient to assist in an understanding of the nature of the position and an understanding of why the position requires a bachelor’s level degree in a specific specialty, or its equivalent. Furthermore, the professor indicates that he reviewed the information contained in the O\*NET and the Handbook and concludes that most positions similar to the proffered position “require a four-year Bachelor’s degree, while others necessitate an advanced degree.” However, he does not identify the occupational categories and the corresponding SOC codes he reviewed. Although the professor opines about the educational requirements of the position, he does not discuss any related SOC codes or distinguish between specialty occupations related to operations management. As we discussed above, the record contains insufficient information to enable us to ascertain in which occupational category the proffered position should be categorized. The absence of any substantive discussion of the duties in relation to a specific occupational category corresponding to a specific SOC code raises doubts about the professor’s level of familiarity with the proffered position and also undermines his conclusion regarding the degree requirement of the position. We may, in our discretion, 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, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.*

The Petitioner asserts that the position requires a master’s degree in business management, operations management, or a closely related field. The Petitioner claims that the Beneficiary is well qualified for the position and references his qualifications. However, the test to establish a position as a specialty occupation is not the credentials of a proposed beneficiary, but whether the position itself requires at least a bachelor’s degree in a specific specialty, or its equivalent. In this matter, as we cannot determine the substantive nature of the position, we cannot properly evaluate what degree is required in order to perform the duties of the position. Accordingly, an analysis of the Beneficiary’s qualifications in this matter is premature. A beneficiary’s credentials to perform a particular job are relevant only when the job is first found to be a specialty occupation. Absent a determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the particular position proffered here, it cannot be determined that the Beneficiary possesses the degree the position requires in order to perform it.

We acknowledge the organizational chart, the photographs of the facility, and the other information related to the Petitioner’s general operations (i.e., “Profit & Loss Statement” for 2020) contained in the record. While these documents are helpful in providing additional context, as well as general information about the organization, they do not sufficiently convey why the proffered position requires specialized knowledge or is particularly complex or unique.

Absent more specific and persuasive evidence regarding the nature of the proffered position’s duties, the record lacks sufficient information to understand the nature of the actual proffered position and to determine that the duties require the theoretical and practical application of a body of highly specialized knowledge attained by a bachelor’s degree, or higher, in a specific discipline.

The Petitioner has not established the substantive nature of the Beneficiary’s work. Consequently, this precludes a conclusion that 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 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.<sup>14</sup>

The Petitioner has not established that the proffered position is a specialty occupation.

ORDER:      The appeal is dismissed.

---

<sup>14</sup> As the lack of probative evidence in the record precludes a conclusion that the proffered position is a specialty occupation and is dispositive of the appeal, we will not further discuss the Petitioner's assertions on appeal regarding the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).