



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

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

In Re: 21179737

Date: JUL. 6, 2022

Appeal of Vermont Service Center Decision

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

The Petitioner, a trading business, seeks to temporarily employ the Beneficiary 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 did not establish that the proffered position is a specialty occupation. While the appeal was pending, U.S. Citizenship and Immigration Services (USCIS) entered into a settlement agreement regarding the class-action lawsuit *Madkudu Inc. v. USCIS*, No. 5:20-CV-02653-SVK (N.D. Cal.).¹ Because the analysis utilized by the Director in arriving at her conclusion on the specialty-occupation issue may be impacted by the terms of that settlement agreement, we find it appropriate to remand this matter for the Director to consider the question anew, and to adjudicate in the first instance any additional issues as may be necessary and appropriate.

With that said, we have observed two deficiencies in the record that the Director may wish to explore as she adjudicates this petition.

First, we have identified discrepancies in the record that undermine the overall credibility of this petition. The Petitioner submitted two distinct education requirements for the proffered position. The Petitioner's support letter states the position requires a bachelor's degree in business administration, economics, or a related field. In its response to the Request for Evidence (RFE), the Petitioner stated that the duties of the position "require the application of a general body of knowledge normally obtained in an academically recognized course of study leading to a bachelor's degree or equivalent in Market Research or a related field, such as Communications, Statistics, Computer and Information Technology, Business Administration or Social Science." The record does not clarify which of these

¹ The specific terms of that settlement agreement may be accessed at <https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notice-and-agreements/notice-of-proposed-settlement-and-hearing-in-class-action-lawsuit-about-h-1b-petitions-for-market>.

are the actual requirements for the proffered position, and the Petitioner provided no explanation for these inconsistencies or ambiguities, which raise questions regarding the position's actual nature and its actual minimum requirements. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Second, even if we were to set these inconsistencies aside, we would still question, as a result of the Petitioner's own stated requirements, whether the proffered position meets the statutory or regulatory definition of the term "specialty occupation." See section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1); 8 C.F.R. § 214.2(h)(4)(ii); 8 C.F.R. § 214.2(h)(4)(iii)(A). Both definitions require a petitioner to demonstrate that a proffered position requires: (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 record of proceedings satisfies neither.

That the Petitioner would find acceptable a bachelor's degree in business administration, with no further specialization, appears to preclude a determination that the position involves a "body of highly specialized knowledge" or that it requires the attainment of a bachelor's degree in a "specific specialty." The First Circuit Court of Appeals explained in *Royal Siam*, 484 F.3d at 147, that:

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 the 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.²

² *Id.* But see *India House, Inc. v. McAleenan*, 449 F. Supp. 3d 4, 2020 WL 1479519 (D.R.I. 2020). In *India House* the court distinguished *Royal Siam* on factual grounds but did not dispute its central reasoning: that a position whose duties can be fulfilled by an individual with a general-purpose bachelor's degree in business administration is not a specialty occupation. Instead, it distinguished *Royal Siam* on factual grounds. Here, the Petitioner specifically recognizes an unspecialized bachelor's degree in business administration as being one of the many degrees it considers as providing an adequate preparation to perform the duties of the proffered position.

The agency has longstanding concerns regarding general-purpose bachelor's degrees in business administration with no additional specialization. For example, in *Matter of Ling*, 13 I. & N. Dec. 35 (Reg'l Comm'r 1968), the agency stated that attainment of a bachelor's degree in business administration alone was insufficient to qualify a foreign national as a member of the professions pursuant to section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). Twenty years later, the agency looked to the nature of the position itself and clarified that a requirement for a degree with a generalized title, such as business administration, without further specification, was insufficient to qualify the position as one that is professional pursuant to section 101(a)(32) of the Act. *Michael Hertz Assocs.*, 19 I&N Dec. at 560. See also *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791 (Comm'r 1988) (vice president for manufacturing in a textile company was not a professional position because individual holding general degree in business, engineering or science could perform its duties).

The record therefore appears to satisfy neither the statutory nor the regulatory definition of the term “specialty occupation.”

As the Petitioner does not appear to have met the threshold requirement of satisfying the statutory and regulatory definitions of the term “specialty occupation,” it does not appear able to satisfy any of the supplemental specialty-occupation criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4) because, again, we must consider those criteria in harmony with the thrust of the related regulatory provisions and with the statute as a whole. In other words, we must construe those criteria’s references to the term “degree” as meaning not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *Royal Siam*, 484 F.3d at 147; *Caremax*, 40 F.Supp.3d at 1187-88; *Payjoy v. Cuccinelli*, No. 19-cv-03977-HSG, 2019 WL 3207839 at *3 (N.D. Cal. July 17, 2019) (statutory and regulatory text appear to support USCIS’s interpretation that the degree requirement must be read in conjunction with the “specific specialty” requirement); *Jonathan D. Rosen Family Foundation, Inc. v. Baran*, No. 1:19-CV-04301-ELR, 2020 WL 6018706 at *3 (N.D. Ga. Mar. 16, 2020). For example, the Petitioner appears unable to satisfy the supplemental specialty-occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) because even if it establishes, in the words of this criterion, that “a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position,” USCIS would still 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. And as discussed above, the Petitioner does not appear able to make that demonstration.

The same would seem to be true of the remaining three criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)-(4): because the Petitioner does not require a bachelor’s degree in a specific specialty, or the equivalent, it would seem unable to satisfy any of those criteria because USCIS would interpret each reference to a “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Congress created the modern H-1B program as part of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978. In doing so, it pivoted away from the prior H-1 standard of whether a position was “professional.” Instead, petitioners were now required to demonstrate that a proffered position qualified as a “specialty occupation.” Section 101(a)(15)(H)(i)(b) of the Act. In the final rule setting forth the requirements for the revamped H-1B program, the agency, responding to commenters suggesting that the proposed regulatory “specific specialty” requirement “was too severe and would exclude certain occupations from classifications as specialty occupations,” stated that “[t]he definition of specialty occupation contained in the statute contains this requirement.” *Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act*, 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991).

The agency’s concerns regarding a general-purpose, non-specific degree in business, or business administration, continued under the revamped H-1B program. See, e.g., *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151 (D. Minn. 1999); *Royal Siam*, 484 F.3d at 147; *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).

To the extent the Petitioner is arguing that a bachelor’s degree in business administration, with no further specialization (or the equivalent), is a bachelor’s degree in a specific specialty, then consistent with agency history and federal case law, we must disagree.

The Petitioner provides a list of courses the Beneficiary completed and asserts these courses provided her the requisite knowledge to perform the duties of the proffered position. However, whether or not a particular beneficiary has completed a specialized course of study directly related to the proffered position is irrelevant to the issue of whether a proffered position qualifies as a specialty occupation, i.e., whether the duties of the proffered position 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, or its equivalent. Although the Petitioner asserts the Beneficiary's coursework will prepare her for the duties of the proffered position, the test to establish a position as a specialty occupation is not the education or experience of a particular beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. As such, the Beneficiary's coursework does not demonstrate that the position's duties require at least a bachelor's degree in a specific specialty, or its equivalent.

We therefore question whether the record of proceedings is sufficient to 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. We similarly question whether the Petitioner has satisfied the statutory definition of a "specialty occupation" at section 214(i)(1)(B) of the Act or the regulatory definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(ii). And if the Petitioner has not satisfied that threshold requirement, it cannot satisfy any of the supplemental specialty-occupation criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).

While we consider both deficiencies significant, we will not deny the petition because it requires a first-line adjudication of the specialty-occupation issue in accordance with the settlement agreement referenced above. That said, as she applies that guidance the Director may wish to explore these deficiencies.

Again, because the analysis utilized by the Director in arriving at her conclusion on the specialty-occupation issue appears impacted by the settlement agreement referenced above, we find it appropriate to remand the matter for the Director to consider the question anew, and to adjudicate in the first instance any additional issues as may be necessary and appropriate. Accordingly, we express no opinion as to the ultimate disposition of this case and will issue the following order.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.