



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

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

In Re: 21900502

Date: JUL. 7, 2022

Appeal of Vermont Service Center Decision

Form I-129, Petition for 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 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 qualifies as a specialty occupation.

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 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 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.

We note as a threshold issue that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *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). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), we construe 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 proffered 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”). Applying this standard, USCIS regularly approves H-1B petitions for qualified individuals who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, we do not rely simply upon a position’s title or the broader occupational category within which a petitioner claims the position is

located. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. We must examine the ultimate employment of the individual, and determine whether the position qualifies as a specialty occupation. *See generally Defensor*, 201 F. 3d 384. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

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. THE PROFFERED POSITION

The Petitioner claims that the Beneficiary will work as a "business analyst" and submitted a labor condition application (LCA) certified for a position located within the "Computer Systems Analysts" occupational category, corresponding to the Standard Occupational Classification code 15-1121. The record contains a description of the proffered position's duties that aligns generally with the duties of positions located within that occupational category.

The Petitioner stated in its support letter that the proffered position requires a degree in business administration, computer science, computer information systems, or a closely related field of study. In its response to the Director's request for additional evidence (RFE), the Petitioner submitted an expert position evaluation to establish that the proffered position met three of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

## III. ANALYSIS

As a result of the Petitioner's own stated requirements, the proffered position does not meet the statutory or regulatory definition of the term "specialty occupation."<sup>1</sup> As noted, both definitions require the Petitioner to demonstrate that the 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, alone precludes 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

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<sup>1</sup> The Petitioner submitted documentation in support of the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

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.<sup>2</sup>

For this reason alone, the record satisfies neither the statutory nor the regulatory definitions of the term “specialty occupation,” and we could end our analysis here and dismiss the appeal on that basis. But we will not do so, because even if we were to set the issue of the “business administration” degree

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<sup>2</sup> *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 administration, engineering or science could perform its duties).

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 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.

aside we would still find that the Petitioner's acceptance of a bachelor's degree from a wide variety of fields would similarly preclude it from satisfying both definitions.

As examples of the specific types of fields from which it would accept bachelor's degrees for this position, the Petitioner has specifically identified business administration, computer science, computer information systems, or a closely related field of study. But the Petitioner also indicates that it would accept a bachelor's degree from an even wider variety fields, so long as the degrees covered topics such as analytics, mathematics, project management, and engineering design. The Petitioner's RFE response quoted extensively from a position evaluation (evaluation) to argue that the range of fields it requires for the position is not disparate, and that the fields are closely correlated with the duties of the position. The evaluation first describes the author's credentials, and then describes the documentation reviewed to render its opinion. Next, the writer explains how the duties of the position would require an individual with the minimum of a bachelor's degree, or higher, in "Computer Science, Computer Information Systems, Business Administration or closely related fields" because those fields provide an individual with the specialized body of knowledge necessary for the position. To support this conclusion, the writer cites to generic job skills related to "analytics, mathematics, project management, and engineering design" to illustrate why the position requires the minimum qualifications. Importantly, the evaluation notes in several sections how the position requires the knowledge attained from a degree in a science, technology, engineering, or mathematics (commonly referred to as STEM) field. Then in a conclusory fashion, without supporting evidence, the writer concludes that this position would require the skills acquired through a bachelor's degree in business administration, and other STEM fields. Although the writer attempts to tie a degree in business administration to other STEM fields by noting that these degree fields cover topics such as "analytics, mathematics, project management, and engineering design," the writer's evidence for this conclusion is not established in the record. The Petitioner's reliance on the evaluation to support its argument that the range of fields of study it accepts is closely related, is misplaced because the evaluation does not provide a strong enough basis to understand how a degree in business administration is closely related to the other degree fields cited.<sup>3</sup>

The Director found this acceptable range of degrees too wide and denied the petition. On appeal, the Petitioner contends that caselaw such as *Taylor Made Software, Inc. v. Cuccinelli*, 453 F. Supp. 3d 237 (D.D.C. 2020) and *Info Labs, Inc. v. USCIS*, --- F. Supp. 3d ---, 2020 WL 1536251 (D.D.C. 2020) support granting the petition. In particular, the Petitioner argues on appeal that these cases reversed USCIS denials of H-1B petitions filed for positions located within the "Computer Systems Analysts" occupational category because the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* states that these positions "normally" require a degree and that degrees in liberal arts or business are common among Computer Systems Analysts, such that the occupation does require a bachelor's level of education in a specific specialty. Thus, the Petitioner argues that the position meets the definition of a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A).

We do not agree. The court in *Taylor Made Software* acknowledged that "there nonetheless must be some connection between the degree and the requirements of the position." See *Taylor Made Software*, 453 F.Supp.3d 237 at 243. We similarly conclude that the proffered position is not a specialty

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<sup>3</sup> And even if it did, the Petitioner would still be left with the deficiencies discussed earlier that are inherent to a petition in which a bachelor's degree in business administration, with no further specialization, is acceptable.

occupation: the Petitioner's stated range of acceptable degree-fields is simply too wide and divergent. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, 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 a degree in two disparate fields, such as philosophy and engineering, 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. Section 214(i)(1)(B) of the Act (emphasis added).<sup>4</sup>

In other words, 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.

Again, the Petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in business administration, computer science, computer information systems, or a closely related field of study. And the record indicates that the Petitioner would accept bachelor's degrees from even more fields, so long as those degrees cover topics such as "analytics, mathematics, project management, and engineering design." This mass grouping of degree-topics is simply too broad to support a finding that the proffered position meets the definition of a "specialty occupation." Furthermore, the Petitioner does not establish how each one of its degree fields is related to the duties of the proffered position, and if a degree in any of these disparate fields would equally prepare an individual to perform the duties of a proffered position, then we question how the position involves a "highly specialized body of knowledge" or requires a bachelor's degree, or the equivalent, in a "specific specialty."

The current record of proceedings does not establish how this divergent range of degrees could form either a body of highly specialized knowledge or a specific specialty.<sup>5</sup> We therefore cannot conclude that the proffered position requires anything more than a general bachelor's degree. For this additional reason, the Petitioner therefore 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 has not met the threshold requirement of satisfying the statutory and regulatory definitions of the term "specialty occupation," it cannot satisfy any of the supplemental specialty-occupation criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4) because, again, we must

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<sup>4</sup> In short, neither of these two cases overcomes either deficiency we are discussing here: (1) the issue of the bachelor's degree in business administration; or (2) the disparate-degree issue.

<sup>5</sup> "A position that requires applicants to have any bachelor's degree, or a bachelor's degree in a large subset of fields, can hardly be considered specialized." *Caremax, Inc. v. Holder*, 40 F.Supp.3d 1182, 1187-88 (N.D. Cal. 2014)

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.<sup>6</sup> For example, the Petitioner cannot 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," we 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 would not be able to make that demonstration.

The same would 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 will not be able to satisfy any of those criteria because we will 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. We therefore will not consider the Petitioner's arguments, and the evidence it submits, in support of its contention that it satisfies the supplemental specialty-occupation criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).

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

#### IV. 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.

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<sup>6</sup> *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).