



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

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

In Re: 21285781

Date: JUN. 14, 2022

Appeal of Vermont Service Center Decision

Form I-129, Petition for 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 Vermont Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner did not establish that the proffered position qualified as a specialty occupation. On appeal, the Petitioner asserts that the Director erred in denying the petition. 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) includes a non-exhaustive list of fields of endeavor. In addition, the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)–(4) provide the additional requirement that the proffered position must also meet one of those criteria to qualify as a specialty occupation. 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, the regulatory requirements

found in the four specialty occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)–(4) 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 considers 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.

In view of this 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”). 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). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

II. ANALYSIS

The Petitioner, an information technology solutions and development provider, wishes to employ the Beneficiary in order for her to perform services as a “technical recruiter” on behalf of its ultimate end-client through a contractual arrangement with the end-client’s prime-vendor. On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position as a full-time position with a Level III wage under the occupational category “Human Resource Specialists” corresponding to the standard occupational classification (SOC) code 13-1071 from the DOL’s Occupational Information Network (O*NET).

To determine whether a particular job qualifies as a specialty occupation, we do not simply rely upon a position’s title or the broader occupational category within which a petitioner claims the position is located. A position’s specific prerequisites are one of the primary elements we evaluate to determine whether it satisfies the statutory definition of a specialty occupation under section 214(i)(1) of the Act. The critical element is 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. To preponderantly demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge, a petitioner must establish that the position requires the attainment of a bachelor’s or higher degree in a specialized field of study or its equivalent.

For the following reasons, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, there are inconsistencies and discrepancies in the petition and supporting documents, which lead us to question the Petitioner's claims regarding the prerequisites it requires to perform in the position, as well as the actual nature and requirements of the proffered position, as follows:

Record of Proceeding	Degree Requirement	Document Submission
Petitioner's 09/2021 Letter	A minimum of a bachelor's degree in human resources, business, communications, or a related field	Initial filing
Prime-Vendor's Letter	The minimum requirement to perform these job duties are a bachelor's degree	Initial Filing
Petitioner's 10/2021 Letter	A minimum of a bachelor's degree in human resources management or related field	Request for Evidence (RFE) and on Appeal
Professor K's Letter	A minimum of a bachelor's degree, or equivalent in a field such as human resource, or another closely related field.	Request for Evidence (RFE) and on Appeal

Here, the Petitioner contends in its initial letter that a bachelor's degree in human resources, business, communications, or a related field is required for entry into the position. Although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147.

In contrast to the Petitioner's initial requirements, the prime-vendor's letter stipulates that the position simply requires "a bachelor's degree." The prime-vendor does not identify the specific fields of study, if any, that are required for the position. The Petitioner later provides information that conflicts with its initially stated position prerequisites when responding to the Director's request for evidence (RFE) (and on appeal) when it narrows its list of acceptable degrees down to a bachelor's degree in human resources management or another related field. When a petition includes discrepancies, those inconsistencies will raise concerns about the veracity of the Petitioner's assertions. the Petitioner must resolve these inconsistencies with independent and 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.*

These discrepancies are material and must be considered prior to the other issues identified within the Director's denial because it would serve no purpose to evaluate whether the position satisfies one of the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) if the stated prerequisites undermine the Petitioner's eligibility claims. It is important to note that the Petitioner did not explain the variances in its position requirements. The Petitioner also does not detail why the position requirements from the prime-vendor differ from the position requirements that it put forth.

¹ The Petitioner submitted documentation to support the petition. While we may not discuss every document submitted, we have reviewed and considered each one.

In response to the RFE (and again on appeal), the Petitioner provides an opinion letter from a professor at W- University. The opinion letter author does not present any discussion or analysis that addresses the issue of the Petitioner's and the prime-vendor's inconsistent prerequisites relative to his own conclusion that "a minimum of a bachelor's degree, or equivalent in a field such as human resource, or another closely related field" are prerequisites for the position. As a result, the professor's evaluation does not assist in establishing that the proffered position qualifies as a specialty occupation. 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 must remedy the incongruent information in the record. Such a resolution must be demonstrated through the submission of relevant, independent, and objective evidence that reveals which position requirements were its true prerequisites. *Matter of Ho*, 19 I&N Dec. at 591-92. Additionally, any evidence to establish the Petitioner's actual requirements must make such a showing as of the date it filed the petition. 8 C.F.R. § 103.2(b)(1), (12). USCIS may not approve a visa petition at a future date after a petitioner or a beneficiary becomes eligible under a new set of facts or based on evidence that postdates the filing date. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978) (finding that nonimmigrant eligibility criteria must be met at the time a petitioner files the petition)).

When a petitioner fails to establish what the actual requirements are for a position in an H-1B petition, ingrained within that shortcoming, it has not established that the position can satisfy the primary H-1B requirement of meeting the statutory definition of a specialty occupation. Based on our review of the entire record, we conclude that the Petitioner has not consistently and sufficiently established what it requires to qualify for the proffered position in this petition.

Because the identified basis is dispositive of this appeal, we decline to reach and hereby reserve the Petitioner's remaining appellate arguments. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of M-F-O-*, 28 I&N Dec. 408, 417 n.14 (BIA 2021) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Those reserved arguments relate to the bases in the Director's decision include (1) whether the Petitioner has demonstrated the substantive nature of the work to be performed by the Beneficiary, and (2) whether the position met any one of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.