



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

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

In Re: 21179762

Date: MAY 31, 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. 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*. *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. 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*

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”). Lastly, 8 C.F.R. § 214.2(h)(4)(i)(A)(I) 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.

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

The Petitioner initially provided the position’s description with eight bullet points and offered additional discussion of those duties in response to the Director’s request for evidence (RFE). For the reasons discussed below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, we conclude that the record does not establish that the job duties require an educational background, or its equivalent, corresponding with a specialty occupation.²

A. Petitioner’s Position Prerequisites

The Petitioner initially stated the position required a bachelor’s degree in public relations, communications, languages, or the equivalent in experience. Within the RFE, the Director question whether the listed fields supported its claim that the organization normally requires a qualifying degree in a specific specialty and whether the listed fields were sufficiently related to the position. In response to those issues in the RFE, the Petitioner amended its degree requirements to only require at least a bachelor’s degree in communications or a closely related field and they reiterated this amended prerequisite on appeal.

It appears the Petitioner may have reduced the number of disciplines it would consider as qualifying for the position after the Director raised a possible deficiency. However, it has not explained why it should be allowed to make such changes to the position’s qualifications subsequent to both the petition’s filing date and the organization’s original eligibility claims. *See 2233 Paradise Rd., LLC v. Cissna*, No. 17-CV-01018-APG-VCF, 2018 WL 3312967, at *3 (D. Nev. July 3, 2018) (finding a petitioner’s requirements as inconsistent when it changes the degree prerequisites after an RFE). A petitioner must establish eligibility at the time it files the nonimmigrant visa petition. 8 C.F.R.

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

² The Petitioner submitted documentation to support the petition, including evidence regarding the position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

§ 103.2(b)(1), (12). U.S. Citizenship and Immigration Services (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. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998).

Even setting that issue aside, we agree with the Director that the Petitioner's original prerequisites are problematic. On appeal, the Petitioner cites to a district court case, *Raj and Company v. USCIS*, 85 F. Supp. 3d 1241 (W.D. Wash. 2015), and claims that it is relevant here.³ We reviewed the decision; however, there is no indication that aspects of the work such as the duties and responsibilities, level of judgment, complexity of the job duties, supervisory duties, independent judgment required, or the amount of supervision received, are analogous to the proffered position here.⁴ Accordingly, there is no indication that the positions are similar.

Further, in *Raj*, the court stated that a specialty occupation requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent. The court confirmed that this issue is well-settled in case law and with our reasonable interpretation of the regulatory framework. In the decision, the court noted that "permitting an occupation to qualify simply by requiring a generalized bachelor degree would run contrary to congressional intent to provide a visa program for specialized, as opposed to merely educated, workers." The court stated that the regulatory provisions do not restrict qualifying occupations to those for which there exists a single, specifically tailored and titled degree program; but rather, the statute and regulations contain an equivalency provision.⁵

However, the Director did not state that eligibility was limited to "a single, specifically tailored degree program to qualify as a specialty occupation" as the Petitioner contends on appeal. Instead, the Director noted:

[T]here must be a close correlation between the required "body of highly specialized knowledge" and the position. A minimum entry requirement of a bachelor's degree in disparate fields of study, does not meet the requirement that the position requires a degree "in the specific specialty (or its equivalent)" unless you establish how each field is directly related to the duties and responsibilities of the particular position.

Here, the Director highlighted that the Petitioner has not explained how its requirement for a bachelor's degree in languages, while relevant due to the multi-language position requirements, would prepare a

³ In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S*, 20 I&N Dec. 715 (BIA 1993). Although we will give a district judge's underlying reasoning due consideration when properly before us, we are not required to follow the analysis as a matter of law. *Id.* at 719.

⁴ We note that the service center director's decision in *Raj* was not appealed to our office. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision in our *de novo* review of the matter.

⁵ We agree with the court that a specialty occupation is one that requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. We further note that a petitioner must also demonstrate that the position requires the theoretical and practical application of a body of highly specialized knowledge in accordance with section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), and satisfy one of the four criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

candidate to perform the majority of the position's public relations-oriented duties. We acknowledge that the duties might warrant a concentration, such as a minor in a foreign language, but the Petitioner has not explained the relevance of this prerequisite to the primary functions of the position.

We further note that in the RFE response, the Petitioner provided job postings from other organizations, and even the Petitioner noted that those organizations require a bachelor's degree in communications or a related field without any mention of a degree in languages. And on appeal, the Petitioner focuses on the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* that lists the fields of journalism and communications. The Petitioner notes that these concentrations are not disparate fields. And still, even on appeal, the Petitioner makes no mention of its original requirement of a bachelor's degree in languages.

The above leads us to conclude that the petition is not approvable based solely on the Petitioner's position requirements because it cannot satisfy the definition of a specialty occupation under section 214(i)(1) of the Act.⁶ And the statutory definition constitutes the primary requirement for a position to qualify as a specialty occupation, without which a petitioner cannot prevail in establishing its position qualifies under the H-1B program. Even though this deficiency is dispositive of the appeal, we will consider the Petitioner's alternative arguments relating to the regulatory criteria below.

B. First Criterion

The Director discussed the evidence submitted for this criterion and found that the Petitioner did not establish its eligibility. On appeal, the Petitioner does not contest the Director's findings for this criterion or offer additional arguments.⁷ Therefore, the Petitioner has abandoned or waived its eligibility claims under this criterion. *E.g.*, *Matter of Zhang*, 27 I&N Dec. 569, 569 n.2 (BIA 2019) (finding that an issue not appealed is deemed as abandoned); *Tolbert v. Queens Coll.*, 242 F.3d 58, 75 (2d Cir. 2001) (finding that issues not addressed, or those discussed in a perfunctory manner and are not accompanied by some effort at developed argumentation, are deemed waived). Accordingly, the Petitioner has not satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

C. Second Criterion

The second criterion presents two, alternative prongs: "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" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

⁶ Later, we address the definitional requirement in greater detail.

⁷ Although the Petitioner mentions the *Handbook* within the appeal brief, it does so relating to two issues, neither of which was contesting the Director's findings under the first criterion. The first mention was in the context of the Director's determination relating to disparate concentrations that the petitioning organization would accept as a qualifying prerequisite for the position. The second, related to the argument that the Director should not require a degree in one single field in order to qualify under the H-1B program.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations. We generally consider the following sources of evidence to determine if there is such a common degree requirement: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry establish that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

We reviewed the *Handbook*’s subchapter entitled “How to Become a Public Relations Specialist” that existed when the Petitioner filed the petition. That resource stated, in pertinent part, that public relations specialists typically need a bachelor’s degree in public relations, journalism, communications, English, or business. Bureau of Labor Statistics, DOL, *Handbook*, Public Relations Specialists (Apr. 10, 2020), <https://www.bls.gov/ooh/media-and-communication/public-relations-specialists.htm#tab-4>. It states that there is a wide range of degrees that are acceptable for positions located within this occupational category, including degrees in English and general-purpose degrees, such as business.

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. Therefore, the *Handbook*’s recognition that a general, non-specialty degree in business, or one of a number of other fields, is sufficient for entry into the occupation strongly suggests that a bachelor’s degree *in a specific specialty* is not a standard, minimum entry requirement for this occupation. The *Handbook*, therefore, does not support the assertion that at least a bachelor’s degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions.

Also, the Petitioner did not submit evidence from an industry professional association indicating such a degree is a minimum requirement for entry into the position. In support of this prong, the Petitioner submitted three job advertisements from other organizations, and two letters from firms in their industry. The Petitioner implies that all the advertisements satisfy the three main elements that the degree requirement is common: (1) to the industry, (2) among similar organizations, and (3) in parallel positions. When determining whether the Petitioner and other organizations share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the size, scope, or scale of operations, expenditures, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

The Director noted shortcomings with the job advertisements because the Petitioner did not show that the postings were “among similar organizations” as required by the regulation. The Director also noted that for the letters from those in the industry, the Petitioner did not offer evidence to support the claims within the letters regarding the types of degrees each entity requires for its public relations specialist positions, or that these companies are similar to the petitioning organization. Ultimately,

the Petitioner has not sufficiently responded to the deficiencies the Director noted in the petition's denial relating to the job advertisements and industry letters.

Regarding the job postings, the Petitioner's appellate arguments focus on the degree requirements for each of the other organizations and the duties for each position, but it does not offer any discussion or evidence relating to whether these organizations are similar to their company. Such a similarity was one of the shortcomings the Director identified in the denial. The Petitioner simply states that most companies in its industry require a bachelor's degree in communications or related field.

Next, the Petitioner turns to the letters from those in the industry and it claims that they are similarly sized and situated companies, but they do not offer anything further to rebut the Director's findings that the record lacked documentary evidence of what these organizations required for the positions, nor did they offer material to establish that the organizations are similar to the petitioning company in not only the type of organization, but also the scope of operations, and the level of revenue and staffing. These were all elements that the Director included in its RFE and in the petition denial, but the Petitioner still does not address them on appeal.

Because we agree with the Director's analysis and determination under this prong of the criterion, and because the Petitioner has failed to substantively contest shortcomings identified in the denial, we conclude it has not demonstrated its eligibility claims under this prong. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

Similar to the first criterion, the Director discussed the evidence submitted for this criterion and concluded the organization did not establish it met the requirements, but the Petitioner's appeal brief does not contest the decision or offer additional arguments. Therefore, further discussion is unnecessary as the Petitioner has not satisfied the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

D. Third Criterion

Again, the Petitioner does not offer a rebuttal to the Director's determination under this criterion or assert any error, and we consider their claims waived under this requirement. *Zhang*, 27 I&N Dec. at 569 n.2.

E. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The Director concluded that duties the Petitioner described did not establish that the offered position is so specialized and complex as to require the attainment of a bachelor's degree in a specific specialty. The Director also granted less evidentiary weight to the opinion letter because it was not sufficiently supported. The Director ultimately decided that the evidence did not distinguish the difference

between the duties the Beneficiary would perform and those normally performed by similar workers, and how the duties of the proffered position are more specialized and complex.

On appeal, the Petitioner does not offer a more detailed account of the position's duties or inform us of a candidate's day-to-day functioning in the position, rather they claim the duties are sufficiently detailed to satisfy this criterion's requirements. Within the appeal brief, it restates the bulleted list it provided to the Director, paraphrased a few of those bullets, explained how the Beneficiary's background prepared them to perform those responsibilities, refutes the Director's findings relying on an opinion letter, and identifies an error in the Director's decision.

A review of the position's duties reveals that the Petitioner provided a high-level account of the position's responsibilities that are not so vague that we cannot determine the substantive nature of the position, but they are also not adequately detailed that they demonstrate eligibility under this criterion (i.e., so specialized and complex that a specialized bachelor's degree is usually required to perform them). Although it appears the Petitioner has shown that a bachelor's degree might be necessary to execute the duties, we do not agree that it has preponderantly explained that the nature of the duties is usually associated with attaining a degree in a specific specialty. Ultimately, the stated duties do not establish a sufficient nexus between an established series of courses one must complete that leads to a specialty degree, and demonstrate how that curriculum is necessary to perform the duties the organization claims are so specialized and complex.

First, we restate the position's duties for context:

- Plan, establish, and direct the organization's corporate public relations programs designed to create and maintain a favorable public image for the company, its clients' brand, and executive client strategy. (Comprises 20% of the position);
- Conduct public relations initiatives by coordinating conventions, conferences, demonstrations, trade shows, and interviews to promote clients' latest products and services in Japanese and English. (Comprises 20% of the position);
- Draft copy and other forms of bilingual communication in Japanese and English to promote clients' products and services to the international market. (Comprises 15% of the position);
- Draft marketing and promotional materials in Japanese and English in both print and electronic forms. (Comprises 10% of the position);
- Prepare and edit the company's publications, such as the company's newsletters, event brochures, corporate website, and other publications for internal and external audiences in Japanese and English. (Comprises 10% of the position);
- Collaborate with manager and business units to coordinate the company's various corporate events, including culinary conventions, demonstrations, seminars, and trade shows by managing all corporate communication matters. (Comprises 10% of the position);
- Prepare responses to request for information from the media, or designate an appropriate spokesperson or information source with respect to the organization's ongoing client initiatives in various industries. (Comprises 10% of the position); and
- Establish and maintain cooperative relationships with representatives of the local community, consumers, employees, and public interest groups by promoting the company's goodwill. (Comprises 5% of the position).

While the Petitioner briefly stated that the Beneficiary will perform various public relations functions, it has not sufficiently developed relative specialization or complexity as an aspect of the proffered position. That is, the Petitioner has not explained in detail how the nature of the duties such as, what comprises the responsibility of overseeing the organization's public relations program among other imprecise functions are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or its equivalent. Viewing these listed services by themselves that the Beneficiary would perform, suggests that the nature of this particular position is not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or its equivalent.

Moving to the opinion letter from [REDACTED], an associate professor at [REDACTED] University, the Petitioner opines that testimonials such as the opinion letter cannot be dismissed without specific and cogent reasoning for finding it not credible. However, the Director did not question the credibility of the opinion author's statements; only that neither he nor the Petitioner supported the author's conclusions with sufficient evidence. The Petitioner's appeal brief quotes a lengthy passage from the opinion letter then discusses the relevance of such evidence in similar proceedings as the one here. So on appeal, the Petitioner alludes to the manner in which the opinion letter contributes to its claims under this criterion, but it does not specifically explain how the opinion letter demonstrates that they have satisfied this regulatory requirement.

Reviewing the opinion letter [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) lists the job duties of the proffered position provided by the Petitioner; and (3) states that these duties require at least a bachelor's degree in the exact degree fields the Petitioner listed when it initially filed the petition (i.e., public relations, communications, languages, or closely related fields). [REDACTED] states that he reviewed the Director's RFE, the Petitioner's initial letter of support, the Beneficiary's education documents, the *Handbook*, and DOL's Occupational Information Network in order to formulate his opinion. We carefully evaluated [REDACTED] assertions in support of this petition but find them insufficient.

[REDACTED] listed several knowledge-sets and skills learned in a public relations bachelor's degree program that he posits are necessary to perform the duties of the proffered position. An account of those knowledge-sets consisted of: media research and writing, public relations and promotional strategy, rhetoric and social influence, organizational communication, relationship marketing and marketing methodologies, business and technical writing, and public opinion and socialization. However, what is lacking from [REDACTED] letter is any analysis of the specific courses the Beneficiary completed when attaining his bachelor's degree, that also discussed how that coursework provided him with the necessary knowledge and skills to perform in the position. The only discussion of the Beneficiary within [REDACTED] letter is a conclusory statement that the skills he "possesses are reflective of the qualifications similar companies require within the industry."

Although the opinion letter is lengthy, it is crafted in a generalized and non-specific manner, raising the possibility that it could be a templated document where the author simply "plugs in" a few relevant aspects such as the duties and the information pertaining to a particular employer. This opinion letter lacks a detailed discussion of the position in this petition and its associated duties. We note that [REDACTED] does not reference the specifics of the particular tasks upon which the Beneficiary would

work in meaningful detail. For example, while we appreciate his brief discussion of the generic bullet-pointed duties provided by the Petitioner and the courses that would provide the knowledge to perform them, that description still falls short of providing a meaningful discussion of what the Beneficiary would actually do in the proffered position and how those duties actually require the theoretical and practical application of a body of highly specialized knowledge.

We also note that [redacted] does not explain the nexus between the Petitioner's bachelor's in languages requirement and the duties, which further diminishes the evidentiary value of this evidence. Based on our review of [redacted] letter, we conclude that the Petitioner has not demonstrated that this opinion letter adequately assessed the nature of the position and appropriately determined parallel positions based upon the job duties and level of responsibilities. Again, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept it or we may give less weight to that evidence. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

Finally, as it relates to the specific error the Petitioner identifies within the Director's decision, the Petitioner claims that the Director stated:

[I]n response to USCIS' RFE, you clarified the original duties of the proffered position. While this clarification of duties indicates that the proffered position requires a certain amount of skill, training, and attention to detail, they do not establish that the proffered position is any more specialized or complex than any other Public Relations Specialist.

We reviewed the entirety of the Director's decision and we cannot confirm that this passage is in the decision denying the petition. We are unsure from where the Petitioner may have found this passage, however we will not discuss it further as it was not part of the Director's decision.

Although the Petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Therefore, the Petitioner has submitted insufficient evidence to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

In summary, the Petitioner has not satisfied any of the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

F. Definitional Requirement

The process of demonstrating that a proffered position is sufficient to meet the requirements under the H-1B program includes more than satisfying one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The regulation also requires a petitioner to demonstrate that a 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); *see also* 8 C.F.R. § 214.2(h)(1)(ii)(B)(1). This statutory definition states: "the term 'specialty occupation' means an occupation that requires . . . [a] 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." (Emphasis added).

First, both the statutory and regulatory definitions mandate that the broader occupation as a whole requires a bachelor's degree in a specific specialty (or an equivalent), at the entry level. *See Itserve All, Inc. v. Cissna*, 443 F. Supp. 3d 14, 39 (D.D.C. 2020) (recognizing that a specialty occupation would encompass a host of jobs, beginning at the trainee level and extending to an expert along with concomitant but differing personal job duties). Consequently, an H-1B approval demands more than simply demonstrating that the particular position a petitioner is offering normally requires a specialized bachelor's degree or its equivalent as the minimum for entry under criterion one. A petitioner must also establish that one cannot even enter the broader occupation if they do not possess the qualifying degree (or its equivalent).

Second, we reason that the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) should be read logically as being necessary—but not necessarily sufficient—to meet the statutory and regulatory definition of a specialty occupation. To otherwise interpret the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) as stating the necessary, but not necessarily sufficient conditions as being adequate to qualify would result in some positions meeting a condition under the criteria, but not under the statutory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000); *Sagarwala v. Cissna*, 387 F. Supp. 3d 56, 64 (D.D.C. 2019).

To avoid this erroneous 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 definition of a specialty occupation. *Vision Builders, LLC v. USCIS*, No. CV 19-3159 (TJK), 2020 WL 5891546, at *1–2 (D.D.C. Oct. 5, 2020) (finding that an employer must satisfy both the definition of a specialty occupation as well as one of the four regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)). This results in a multi-part analysis to determine whether a particular position qualifies as a specialty occupation. As a result, an H-1B petition cannot be approved unless a petitioner demonstrates that a proffered position satisfies this statutory definition; not even if it demonstrates it has satisfied one of the four regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Accordingly, were a petitioner to submit sufficient evidence to satisfy one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), we would still have to evaluate whether it had also demonstrated that the broader occupation as a whole requires a bachelor's degree in a specific specialty (or an equivalent), even at the entry level. We conclude that in addition to not meeting any of the regulatory criteria, the Petitioner has not demonstrated the position in this petition qualifies as a specialty occupation under the statutory definition.

G. Labor Condition Application Error

Although not included in the Director's decision, and we will not include this as a basis for dismissing this appeal, it appears the Petitioner used the incorrect year to find the required prevailing wage on the DOL ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers (LCA). DOL guidance under step 5 instructed the Petitioner to utilize the OES Search Wizard to ensure the correct prevailing wage is used on the LCA. Part of that process includes selecting the correct Data Source that is organized by annual options spanning from July of a particular year through June of the following year. The Petitioner indicated on the LCA that the employment was to begin in October of 2020 and would end in September of 2023. However, it selected the previous year from the Source Year option on the LCA, which was from July 1, 2019, through June 30, 2020. This resulted in the

Petitioner specifying a lower prevailing wage—lower by slightly more than six percent—than it was required to pay to the Beneficiary, as mandate by section 212(n)(1) of the Act and 20 C.F.R. § 655.731(a). It appears that this was a simple mistake that the Petitioner should be aware of in any future H-1B filing.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.