U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29023542

Date: DEC. 20, 2023

Appeal of California Service Center Decision

Form I-129, Petition for a 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 nonimmigrant 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 California Service Center denied the petition, concluding the record did not establish that the proffered position qualifies as a specialty occupation nor that the Beneficiary was qualified to perform the duties of the proffered position. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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. SPECIALTY OCCUPATION

The Petitioner filed its petition to seek to employ the Beneficiary as a business intelligence analyst and it submitted a labor condition application (LCA) certified for a position in the business intelligence analyst occupational category.[1] The Director may request additional evidence when determining eligibility for the requested benefit. 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).

[1] After the filing of the petition, the Department of Labor's Bureau of Labor Statistics (BLS) advised that the business intelligence analyst entry contained at Standard Occupational Code (SOC) 15-1199.08 had been discontinued and replaced by the business intelligence analyst entry described at SOC 15-2051.01.

Upon review of the record in its totality, we conclude that the Petitioner has not established that the proffered position qualifies as a specialty occupation. The record does not sufficiently establish the substantive nature of the proffered position, which precludes us from determining that the proffered position qualifies as a specialty occupation under sections 101(a)(15)(H)(i)(b), 214(i)(1) of the Act, 8 C.F.R. § 214.2(h)(4)(i)(A)(1), 8 C.F.R. § 214.2(h)(4)(ii) and (iii)(A). Chiefly, the record does not contain a job description which sufficiently describes the position's duties with consistent detail to permit us to evaluate whether the duties require an educational background, or its equivalent, commensurate with a specialty occupation.[2]

A. Legal Framework

The Act at Section 214(i)(1), 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires: (A) the 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) adds a non-exhaustive list of fields of endeavor to the statutory definition. And the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires 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.

The statute and regulations must be read together to make sure the proffered position meets the definition of a specialty occupation. *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 statue 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). Considering the statute and the regulations separately could lead to scenarios where a petitioner satisfies a regulatory factor but not the definition of specialty occupation contained in the statute. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). The regulatory criteria read together with the statute gives effect to the statutory intent. *See* Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991).

So we construe the term "degree" in 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 supporting the statutory definition of specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one

[2] Although we may not discuss every document submitted, we have reviewed and considered each one.

that relates directly to the duties and responsibilities of a particular position"). USCIS' application of this standard has resulted in the orderly approval of H-1B petitions for engineers, certified public accountants, information technology professionals, and other occupations commensurate with what Congress intended when it created the H-1B category.

And job title or broad occupational category alone does not determine whether a particular job is a specialty occupation under the regulations and statute. The nature of a petitioner's business operations along with the specific duties of the proffered job are also considered. We must evaluate the employment of the individual and determine whether the position qualifies as a specialty occupation. *See Defensor*, 201 F.3d 384. So a petitioner's self-imposed requirements are not as critical as whether the nature of the position the petitioner offers requires the application of a theoretical and practical body of knowledge gained after earning the required baccalaureate or higher degree in the specific specialty required to accomplish the duties of the job.

B. Analysis

The vague and inconsistent manner in which the Petitioner has described the proffered position and its job duties render us unable to ascertain the position's substantive nature. And if we cannot ascertain the position's actual, substantive nature, then we cannot determine whether it satisfies at least one of the specialty-occupation criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*)-(*4*). We therefore agree with the Director that the Petitioner has not established that the position is a specialty occupation.

The Petitioner, founded in 2013, describes itself as a "global IT and Engineering solutions provider catering to a diverse customer base." But the Petitioner's description did not shed any meaningful light on the Petitioner's business and whether it requires the services of an individual performing the duties of a specialty occupation. So, the Director issued a request for evidence (RFE) seeking additional employer information. In response the Petitioner submitted copies of its most recent federal income tax return, photographs of its office, office lease and extensions, utility bill, and certificate of incorporation. The tax documents and invoices indicate an income which tends to reflect that the Petitioner may be conducting some business. However, it is not clear what the nature of the business operations is. The Petitioner's certificate of incorporation is similarly unable to illuminate what specific business the Petitioner operates and the services it offers. We note that the Petitioner's principal place of business is an apartment tower in southeastern Pennsylvania. Though the lease the Petitioner submitted lists "office" as the permitted use for the leased premises, the lease submitted into the record was incomplete. Although it referenced an "Exhibit A – Plan of Building and Premises," the record did not contain the exhibit. The submitted pictures appear to reflect a temporary workplace with easily removable signage and furniture. Whilst it can be inferred from the record and other materials that the Petitioner's business may have some connection to information technology and staff augmentation, it is wholly unclear what the nature of the service provided by the Petitioner to its clients is. When it is unclear as to what exactly the Petitioner does, it is equally unclear whether work of a specialty nature is required to accomplish the Petitioner's services for client IT organizations.

If we are unable to assess, categorize, and comprehend the Petitioner's business, we cannot conclusively determine the type and complexity of the work described in the proffered job duties. And this is made especially more difficult when the job duties provided are vague, as is the case here. This vagueness obscures whether the proffered job is a specialty occupation. The Director requested

additional evidence because the Petitioner's duties were generalized and did not provide sufficient information to assess what the actual occupation is.

In response to the RFE, the Petitioner provided a chart containing the same key job duties as those listed in the initial petition. The chart contained a column describing "additional details about the job duty." But the "additional details" did not add the specificity we require to evaluate whether the proffered job's duties describe work of a specialty occupation nature. The Petitioner selected the "business intelligence analyst" entry at 15-1199.08 of the Department of Labor (DOL) Occupational Information Network (O*NET) as the job category closest in correspondence to its business intelligence analyst position. But the initial job description (replete with buzz words and technical jargon) and the "additional details" to the job description the Petitioner provided in response to the Director's RFE does not explain how the job relates to or comprises duties that fall within the selected O*NET category. In one example, the Petitioner's job description as listed in the initial petition and RFE described a duty wherein the business intelligence analyst would "work with Sales, KYC, Credit, Onboarding, Compliance, Legel, IT, and CSG team for requirements storyboard preparations, validations, Testin (SIT, UAT), Training and Implementation." In response to the RFE, the Petitioner provided "additional details" stating this job duty related to gathering requirements, establishing project goals and objective, eliciting requirements, and documenting requirements. But it is not clear how this relates to any of the tasks the Petitioner reviewed when selecting "business intelligence analyst" as the most similar O*NET job category to their business intelligence analyst position. It is not evident from the evidence in the record how the Petitioner's duties would "synthesize current business intelligence or trend data," "maintain library of model documents, template, or other resuable knowledge assets," or any of the other tasks contained in the O*NET entry for business intelligence analyst. In fact, the "additional details" the Petitioner provided raised questions about the true nature of the job. For example, "liaising between product and development" or "understanding customer needs," can relate to jobs other than business intelligence analyst that are in the computer and software sphere.[3] So the characterization of the proffered job's duties raises questions about the substantive nature of the proffered job and therefore whether it is a specialty occupation that satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Our doubts about the accuracy of the job duties go directly to the heart of whether the proffered job is a specialty occupation. And any evidence rooted in the job duties is considerably weaker as a result. The Petitioner provided an opinion statement from [redacted], professor in the department of data analytics and information systems at [redacted] which concludes that the Petitioner's proffered position is a specialty occupation.[4] But [redacted] opinion is based on the nonspecific job duties provided by the Petitioner. And as we said above, these job duties do not contain the specificity or detail required to evaluate whether the Petitioner's proffered job satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). And [redacted] opinion does not sufficiently tie in the Petitioner's job duties when they make their conclusions. For example, [redacted] opinion grounds the "complexity and specialization" of the Petitioner's proffered position in the minimum degree requirements for the position and not the specific tasks the Petitioner required the proffered position to perform. So [redacted] opinion statement is not sufficiently

[3] *See, e.g.*, Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Software Developer (Sept. 6, 2023), https://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm.

[4] [redacted] also shared their opinion about the Beneficiary's qualification in their respective opinions, as discussed below.

material, relevant, or probative to evaluate whether the Petitioner's business intelligence analyst position is a specialty occupation. We may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). But an opinion statement is afforded less weight by us where there is cause to question or doubt the opinion, or if it is not in accord with other information in the record as is the case here.

In summary, we are unable to ascertain the proffered position's substantive nature due to the deficiencies outlined above. And since we cannot determine its substantive nature, we cannot conclude whether the position qualifies as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*)-(*4*). The Petitioner has therefore not overcome this ground of the Director's decision.

II. BENEFICIARY QUALIFICATIONS

On appeal, the Petitioner asserts that the Beneficiary is qualified to perform the duties of the position. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. *Cf. Matter of Michael Herts Assocs.,* 19 I&N Dec. 558, 56 (Comm'r 1988). As discussed above, the Petitioner has not established that the proffered job's duties are of the substantive nature of a specialty occupation requiring the application of a theoretical and practical body of highly specialized knowledge attained after earning a bachelor's degree or higher or its equivalent in the specific specialty minimally mandated for entry into position. *See* section 291 of the Act, 8 U.S.C. § 1361. So, we do not have to address the Beneficiary's qualifications further.

But even if the Petitioner had established that its proffered job is a specialty occupation, we would nonetheless conclude it had not provided material, relevant, or probative evidence of the Beneficiary's qualifications to perform the duties of a specialty occupation.

A. Legal Framework

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an individual applying for classification as an H-1B nonimmigrant worker must possess a license if it is required for the occupation, have earned a bachelor's or higher degree in a specific specialty related to the job duties, or have earned the equivalent of a bachelor's or higher degree in a specific specialty related to the job duties based on having experiences in the specialty equivalent to the completion of the degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The supplementing regulations at 8 C.F.R. § 214.2(h)(4)(iii)(C) restate the statute and require meeting one of four criteria to qualify to perform services in a specialty occupation:

(1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
(2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
(3) Hold an unrestricted state license, registration or certificate which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(4) have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) provides five methods by which a petitioner can satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*):

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
(2) The result of recognized college-level equivalency examinations or special credit programs such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training and/or work experiences in areas related to the specialty and that the noncitizen has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

B. Unqualified Beneficiary

The Beneficiary earned an Indian master of business administration degree from the [redacted] (now known as the [redacted]) and an Indian three-year bachelor of computer science from the same institution. We agree with the Director that the Petitioner has not established the Beneficiary's qualifications for the proffered specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*)-(*3*). So the Beneficiary does not hold a United States bachelor's or higher degree required by the specialty occupation from an accredited college or university. They likewise do not hold a foreign degree determined to be equivalent to a United States bachelor's or higher degree required for the specialty occupation from an accredited college or university. Neither the Beneficiary's master of business administration degree nor their bachelor of computer science degree is the single source equivalent of a United States bachelor's or higher degree required by the specialty occupation from an accredited college or university. The Petitioner has also not demonstrated that the Beneficiary holds an unrestricted State license, registration, or certification which authorizes them to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment.

When the occupation does not require a license and the Beneficiary does not have the required U.S. degree or its foreign degree equivalent in the field required for entry to the specialty occupation, our analysis revolves around whether the Petitioner established that the Beneficiary possesses the education, specialized training and/or progressively responsible experience in the specialty equivalent to the completion of the required U.S. degree or its foreign degree equivalent and has progressively

responsible experience in job position in the specialty constituting a recognition of expertise as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

The Director based their decision on the insufficiency of the evaluations of the Beneficiary's education and work experience provided by the Petitioner. As we have stated before, we may exercise our discretion and consider opinion statements submitted by the Petitioner as advisory. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). Most relevantly, the record of proceeding contains:

- An evaluation submitted with the appeal by [redacted], a college professor at [redacted], concluding that the Beneficiary's education, training and/or experience was equivalent to a United States baccalaureate degree in computer information systems; and
- Letters from the Beneficiary's former employers.

The evaluation submitted by the Petitioner is also accompanied by the writer's curriculum vitae; a self-authored statement of "expertise," letter(s) from their employing institutions attesting to their authorization to grant college-level credit or training and/or work experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training/work experience, and/or documentation either from an internal policy document or printed from publicly available internet sources describing the institution's policy for granting academic credit.

The evaluation submitted by the Petitioner introduces questions and doubts about the Beneficiary's qualifications and does not fit into the requirements of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) requires that an evaluation to document eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) be issued by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit. [redacted] opinion is accompanied by two letters from officials at [redacted] attesting to [redacted] authority to issue credit for relevant work experience where appropriate. The letters are identical in every way other than the date, letterhead, and signature block. Most specifically, the content of the submitted letters conflicts with public information from [redacted] which makes no provision for credit to be authorized based on work experience. Per their published policy [redacted] only awards credit for academic work completed at other academic institutions and not for work experience or training. Examples of sources listed in the policy from which [redacted] may accept credit are accredited institutions, foreign universities, U.S. military credit for approved job and educational experience, and miscellaneous sources such as internships and nontraditional learning experiences. Work experience is not mentioned or provided for. Moreover, the policy states that the credit may or may not apply for the purposes of graduation from [redacted], regardless of the number of credits transferred. This conflict raises doubt about whether the writer is authorized to grant credit based on training and/or work experience. The record of proceeding does not contain material, relevant, or probative evidence addressing this discrepancy. [redacted] opinion does not satisfy the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) to establish the Beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*). Opinion statements have less weight where there is cause to question or doubt the opinion, or if it is not in accord with other information in the record as is the case here.

And there is insufficient evidence in the record to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*2*), (*3*), or (*4*). So we will turn to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) which grants USCIS the authority to make our own determination on the Beneficiary's qualifications. Specifically, we can evaluate that an individual has earned the equivalent of the degree required by the specialty occupation through a combination of education, specialized training and/or work experiences in areas related to the specialty and that the noncitizen has achieved recognition of expertise in the specialty occupation as a result of such training and experience. We may determine equivalency by accepting three years of specialized training and or work experience demonstrated by the individual for each year of college level training the noncitizen lacks. Additionally, the noncitizen must demonstrate recognition of expertise by one of the following:

> (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
>
> (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
>
> (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
>
> (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
>
> (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record is not sufficient to satisfy 8 C.F.R. § 214.2(h)(4))(iii)(D)(*5*) either. The record of proceedings provides insufficient work-experience evidence for us to reasonably conclude that the Petitioner has satisfied any one of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*i*)-(*v*).[5] So we cannot conclude that the evidence of the Beneficiary's work experience qualifies for recognition of any years of college-level credit by correct application of the H-1B beneficiary-qualification regulations' "three-for-one" standard. Based upon the findings articulated above, we conclude that the totality of the evidence regarding the Beneficiary's foreign education and work experience does not satisfy any criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (h)(4)(iii)(D).

III. CONCLUSION

It is the Petitioner's burden to provide competent and credible evidence of the nature of its proffered specialty occupation and the Beneficiary's qualification for the proffered position. The Petitioner has not met their burden for the reasons set forth above.

ORDER: The appeal is dismissed.

[5] Though acknowledged, the letters regarding the Beneficiary's work experience lack the detail necessary to meet these requirements.