



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

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

In Re: 26807975

Date: JULY 31, 2023

Appeal of Vermont 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 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 the record did not establish that the proffered position qualifies as a specialty occupation. 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. 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) is 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) 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 the regulations must be read together to make sure that 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 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). Considering the statute and the regulations separately leads 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 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, 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 the 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 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.

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 is offering the Beneficiary the position of senior development analyst. The petition included a labor condition application (LCA) certified for a position located within the “Civil Engineers” occupational category corresponding to the Standard Occupational Classification code 17-2051.

The record of proceedings contains multiple expressions purporting to be the Petitioner’s stated requirements for the senior development analyst position. The Petitioner stated in its support letter that the senior development analyst position requires a bachelor’s degree in mechanical engineering or a related field. But the Petitioner also submitted a job description for a senior development analyst requiring a minimum of a bachelor’s degree or master’s degree in engineering, environmental science, business, real estate, or urban planning or related field. Both were signed by the Petitioner’s manager who is also the authorized signatory for the Petitioner. And the Petitioner submitted a letter from their director of development which stated that the senior development analyst position required a minimum of a bachelor’s degree in mechanical engineering or a related field for entry into the role. So the Director issued a request for additional evidence (RFE) to evaluate the Petitioner’s eligibility, as its divergent statements regarding the position’s requirements called its actual educational requirements into question. In its response to the Director’s RFE, the Petitioner resubmitted the job description for its senior development analyst and confirmed that the minimum requirements of the senior development analyst position “regardless of the complexity level” were “a Bachelor of Science Degree in engineering, environmental science, business, real estate, or urban planning or related field.” The Petitioner also submitted copies of job postings and resubmitted copies of the Beneficiary’s educational credentials.¹ On appeal, the Petitioner argues that the Director erred in concluding that their educational requirement did not compose a specialty which comprises a body of theoretical or practical knowledge to perform the duties of the Petitioner’s senior development analyst position. The Petitioner states that applicable case authority supports their interpretation that a wide and disparate range of degree fields of study can compose a specialty which comprises a body of theoretical or practical knowledge to perform the duties of the Petitioner’s senior development analyst position. We do not agree.

III. ANALYSIS

A. Specialty Occupation

The proffered position does not meet the statutory or regulatory definition of the term “specialty occupation.” The Petitioner has not satisfied the requirement that the proffered position require the theoretical and practical application of a body of specialized knowledge and that the position requires attainment of a bachelor’s degree in the specific specialty to perform the job duties.

The Petitioner states that they accept a bachelor’s degree in business, with no further specialization, among numerous other degrees as a minimum qualification for entry into the proffered position. If a

¹ The Petitioner also submitted documentation in support of the H-1B petition, RFE and appeal 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.

position is a “specialty occupation” under the statute and regulations, it is one which involves a “body of highly specialized knowledge” attained after completing a bachelor’s degree or higher in a “specific specialty.” A general degree requirement like a bachelor’s degree in business, standing alone without any further specialization, is not a requirement for a bachelor’s degree in a specific specialty, or the equivalent. And this generally excludes any proffered position accepting such a degree as a minimum requirement for entry into the position from consideration as a specialty occupation. A bachelor’s degree in business without further specialization, or the equivalent, is so broad that it could apply to a position in finance as well as general business operations and management in a variety of endeavors. So it cannot provide an individual with the “body of highly specialized knowledge” required to perform the duties of a specialty occupation.

In accordance with the statutory and regulatory requirements, the agency has consistently disfavored general purpose bachelor’s degree in business with no additional specialization. *See Matter of Ling*, 13 I&N Dec. 35 (Reg’l Comm’r 1968); *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm’r 1988); *Matter of Caron Int’l*, 19 I&N Dec. 791 (Comm’r 1988). Even after Congress revamped the H-1B program as part of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, the agency’s concerns with a general-purpose bachelor’s degree in business with no additional specialization continued. *See e.g. Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151 (D. Minn. 1999); 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).

As the First Circuit Court of Appeals explained in *Royal Siam*, 484 F.3d at 147:

The courts and the agency consistently have stated that, although a general-purpose bachelor’s degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify 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.

A bachelor’s degree in business with no further specialization is not a degree in a specific specialty. And the fact that the Petitioner would accept such a degree as a minimum qualification for entry to the proffered position does not satisfy the statutory and regulatory definitions of specialty occupation. On that basis alone, we could dismiss the appeal without any further discussion.

But the record of proceedings reflects that along with a bachelor’s degree in business with no further specialization, the Petitioner would also accept other varied bachelor’s or master’s degrees in engineering, environmental science, business, real estate, or urban planning for entry into the proffered job. Even if we were to leave to the side the dispositive issue of the Petitioner’s acceptance of a business degree with no further specialization, we would still conclude that the Petitioner’s acceptance

of a bachelor's degree from the wide variety of fields it specifies precludes the Petitioner from satisfying both the statutory and regulatory definition of specialty occupation.

On appeal, the Petitioner contends that the Director applied an incorrect legal standard when they denied the petition because caselaw such as *Residential Finance Corporation v. U.S. Citizenship & Immigration Servs.*, 839 F.Supp.2d 985 (S.D. Ohio 2012) and *Relx v. Baran*, 397 F.Supp.3d 41 (D.D.C. 2019), supports a conclusion that their wide range of degrees can constitute a specialty required to perform the duties of a specialty occupation. The Petitioner's arguments are not persuasive.

We agree there is no requirement in the statute for the required education to consist of one specific degree or major. But there must be a close relation between the required specialized studies to constitute a common "specialty" and that "specialty" must be related to the duties of the position as supported by the case law cited by the Petitioner in their appeal. When a petitioner would accept a bachelor's degree from a wide variety of seemingly unconnected fields, it cannot establish that the fields constitute a "specialty" if they do not establish how each accepted and specific field of study is directly related to each another and to the duties and responsibilities of the particular position.

We interpret the statutory "the" and the regulatory "a" to mean a singular specialty. But we do not so narrowly interpret the statute and regulation such that multiple closely related fields of study would not constitute a specialty to perform the duties of a related specialty occupation. In general, 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 provided the specialties are closely related such that they constitute a common specialty required to perform the duties of the position. If they constitute a common specialty, then the required "body of highly specialized knowledge" would essentially be the same. If the required degree fields do not constitute a common specialty, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be "in the specific specialty (or its equivalent)." A minimum entry requirement that did include disparate fields of study, such as philosophy and engineering for example, would require the Petitioner to establish how each field is directly related to all of the duties and responsibilities of the particular position. Section 214(i)(1)(B) of the Act (emphasis added).

The courts in *Residential Finance* and *Relx* were considering whether the statute required that only one specific degree be accepted for a position to be specialized. Neither stands for the much broader proposition that a wide variety of degrees can constitute a specialty required to perform the duties of a specialty occupation. Quite the opposite, *Residential Finance* found for the Plaintiff only after determining that the Plaintiff had established their minimum requirements capture the necessity of a baccalaureate degree in a specialized course of study in a field related to the proffered job's duties as a minimum. *Residential Finance Corporation*, 839 F.Supp.2d at 996. In *Relx*, the court determined that a specialty occupation existed only after determining that the occupation required a specialized course of study leading to the type of degree the plaintiff had earned. *Relx*, 397 F.Supp.3d at 55.

We therefore cannot conclude that the proffered position's minimum requirement for entry into the job is anything more than a general bachelor's degree. The Petitioner has not satisfied 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).

Without the express requirement of a baccalaureate or higher degree providing the theoretical and practical application of a body of highly specialized knowledge, the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4) cannot be satisfied. Those supplemental regulatory criteria are read together within the related regulations and the statute as a whole. So, where the regulations refer to the term “degree,” we interpret that term to mean a baccalaureate or higher degree in a specific specialty related to the proffered position, or the equivalent. *See Royal Siam*, 484 F.3d at 147. The word “degree” is mentioned in each prong of the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4). And where, as here, a baccalaureate or higher degree in a specific specialty is not required as a minimum requirement of entry, it follows that each prong under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4) remains unsatisfied. So we will not consider the Petitioner’s arguments and the evidence it submits in support of its contention that it satisfies the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4).

We conclude that the proffered position here is not a specialty occupation because the Petitioner’s stated range of acceptable degree fields is too broad to constitute a specialty required to accomplish the duties of proffered job. 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 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)(I)-(4). The Petitioner has not established that the proffered position is a specialty occupation.

B. Non-Corresponding Labor Condition Application

The certified LCA submitted with the petition does not correspond to the petition. A Petitioner seeking to file an H-1B petition must submit a certified LCA. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a). A DOL-certified LCA memorializes the attestations a petitioner makes regarding the employment of the noncitizen in H-1B status. *See* 20 C.F.R. § 655.734(d)(1)-(6). Whilst DOL is responsible for certifying that the Petitioner has made the required LCA attestations, USCIS evaluates whether the submitted LCA corresponds with the Petitioner’s H-1B petition. 20 C.F.R. § 655.705(b). USCIS may consider DOL regulations when adjudicating H-1B petitions. *See Int’l Internship Programs v. Napolitano*, 853 F.Supp. 2d 86, 98 (D.D.C. 2012), *aff’d sub nom Int’l Internship Program v. Napolitano*, 718 F.3d 986 (D.C. Cir. 2013). *See also ITServe Alliance, Inc. v. DHS*, 590 F. Supp. 3d 27, 40 (D.D.C. 2022), *aff’d sub nom ITServe Alliance, Inc. v. DHS*, 714 F. 4th 1028 (D.C. Cir. 2023) (noting that 20 C.F.R. § 655.705 requires USCIS “to check that the [H-1B] petition matches the LCA”).

The Petitioner attested that the senior development analyst would perform the following duties:

- Supporting the site assessment and acquisition process for solar and energy storage projects, including interfacing with landowners and participating with the drafting of lease term-sheets and executed leases.
- Supporting municipal, state, and federal permitting of solar and energy storage projects.
- As directed by senior management, managing individual aspects of the project development process, including cost control, status reporting, and management of engineers and consultants for assigned projects.
- Supporting the preparation, negotiation, and finalization of key project agreements and rights, such as PPA proposals and permit applications.
- Demonstrating professional document control practices, and consistent use of the Petitioner's project management tools.
- Conducting competitive market analyses and preparing comprehensive reports for use in assessing new and existing markets.
- Becoming the Petitioner's lead point of responsibility for at least one key aspect of project development (e.g.: project management database administration, interconnection status control, portfolio financial control).
- Assisting in guiding the Petitioner's Development Analysts to success and functioning as a point of learning for them.

These duties are non-corresponding to the description of a civil engineer contained in the Occupational Information Network (O*NET). *See* O*NET Summary Report for "Civil Engineers," at <https://www.onetonline.org/link/summary/17-2051.00>. A civil engineer directs engineering activities and compliance with governmental regulations. They do not draft or execute leases according to the O*NET entry. And civil engineers manage and direct construction, operations, and maintenance projects at sites. The senior development analyst is required to prepare, negotiate, and finalize project agreements, but not manage construction or operations. The O*NET entry describes civil engineers typically computing load and grade requirements, water flow rates, or material stress factors to determine design specifications. The senior development analyst does not perform these traditional engineering duties. An LCA certified for a job classification which does not correspond to the proffered position cannot support an H-1B petition. So the petition is unapprovable as filed even if the Petitioner could have demonstrated that the proffered job is a specialty occupation under section 214(i)(1) of the Act and the regulations at 8 C.F.R. § 214.2(h)(4)(ii).

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.