



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

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

In Re: 26928797

Date: JUN. 14, 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 that 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 sustain the appeal.

The record in its entirety credibly reflects that the Petitioner's data analyst supply chain position requires the formulation and application of mathematical modeling and other optimizing methods within supply chain transportation analytics for the Petitioner's prominent nationwide home improvement business consisting of ubiquitous retail stores and a prominent e-commerce portal. The record contains a credible job description from the Petitioner's senior manager of logistics with percentages of time spent by the data analyst supply chain as well as a meaningfully detailed explanation of the required knowledge to perform the specific detailed duties listed. The Petitioner requires an individual with a bachelor's degree in business analytics or a directly related field and we find the record sufficient to support that assertion by a preponderance of the evidence.¹ When

¹ Counsel undermines this on appeal in several ways. For example, Counsel asserts that the wide range of potential fields of study such as business, mathematics, engineering, or computer science contained in the U.S. Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) entry for "Operations Research Analysts" comprise a specialty such that jobs falling within the classification are specialty occupations under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). This is incorrect. Firstly, Counsel's argument wholly ignores the fact that the *Handbook* reflects that a common minimum entry requirement

reviewed within the context of the Petitioner's business operations, we find the evidence of record sufficient to demonstrate that this Beneficiary's work would in fact involve a "body of highly specialized knowledge" attained through a precise and specific course of study that relates directly and closely to the proffered position.

The evidence of record therefore establishes that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty or its equivalent. It qualifies for classification as a specialty occupation as the term is defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). It also establishes that the position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, or the equivalent, and it therefore also satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The record demonstrates that the Beneficiary possesses a U.S. master's degree in business analytics, so they are qualified to perform the duties of this specialty occupation.

ORDER: The appeal is sustained.

for the operation research analyst occupation is a bachelor's degree in business. Educational requirements consisting of a general business degree comprise a broad and general field of knowledge and not one which relates to a specialty affording theoretical and practical body of specific knowledge required to perform the duties of a proffered job. 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). Secondly, whilst we do agree with Counsel that it is possible for a petitioner to accept multiple-degree fields and still have a proffered position be classified as a specialty occupation, the grouping of degree-fields as contained in the *Handbook* is simply too broad to support a conclusion that the range of fields comprises a specialty providing a body of theoretical and practical knowledge required to perform the duties of the position. And the cases Counsel cites in support in fact undercut their premise. The courts in *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) were considering whether the statute requires that only one specific degree be accepted for a position to be specialized. Neither stands for the 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 the plaintiff had earned. *Relx*, 397 F.Supp.3d at 55.

And Counsel also argues that the Petitioner's, or in fact any petitioner's, self-imposed requirements can sustain a conclusion that a proffered position is a specialty occupation so long as those requirements consist of a bachelor's degree in a field or fields of study that compose a specialty. This is not correct. Were we limited solely to reviewing a petitioner's claimed self-imposed requirements, an organization could bring any individual with a bachelor's degree to the United States to perform any occupation so long as the petitioning entity created a token degree requirement. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). And the record does not contain document or evidence supporting anything other than the conclusion that the Petitioner's self-imposed requirements are a preference for high caliber candidates. Counsel's arguments in sum seek to advance the proposition that any bachelor's degree requirement for a proffered position renders the position a specialty occupation and provide inapplicable authority in support. The unsupported statement of an attorney on appeal or in a motion are not evidence. See *INS v. Phinpathya*, 464 U.S. 183, 188 n.6 (1984). Given the overall credibility of this petition, bolstered by the Petitioner's detailed statement consisting of clear duties and reference to specific specialty knowledge gained through a course of study in a field related to the duties performed in the proffered job, we will disregard the statements of Counsel consistent with *Phinpathya* and conclude that the Petitioner's proffered job is sufficiently complex or unique such that it can only be performed by an individual with a bachelor's degree in a specific specialty in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).