



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF S- LLC

DATE: APR. 12, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a public relations company, seeks to temporarily employ the Beneficiary as a “publicist” 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 California Service Center denied the petition, concluding that the Petitioner had not demonstrated that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner asserts that it has established eligibility for the benefit sought.

Upon *de novo* review, we will dismiss the appeal.

I. SPECIALTY OCCUPATION

A. Legal Framework

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must 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.

8 C.F.R. § 214.2(h)(4)(iii)(A). 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

B. Proffered Position

The Petitioner, a public relations company, states that the Beneficiary will perform the services of a publicist. The record’s labor condition application (LCA) was certified for a position falling within the Standard Occupation Classification (SOC) code and category 27-3031, “Public Relations Specialists,” at a Level I wage.¹

In response to the request for evidence (RFE), the Petitioner described the Beneficiary’s duties, in part, as follows:

- Drafting and editing press materials (pitch letters, advisories, releases, production, notes, etc.);

¹ The Petitioner is required to submit a certified LCA to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the “area of employment” or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. *See Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

The selected Level I wage is the lowest of four assignable wage levels. A wage determination starts with a Level I, entry level wage, and progresses to a higher wage level, up to Level IV, after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. DOL, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. *Id.*

- Performing proactive media relations – pitching stories to traditional media and bloggers, developing relationships with media figures, and uncovering new outlets;
- Planning and pitching special events, and providing onsite support, event management, and all other oversight necessary to their success;
- Pitching, attending, and covering festivals, tours, press screenings, premieres, and other activations;
- Creating and managing campaign timelines;
- Creating and maintaining talent/filmmaker/cast press schedules;
- Serving as the primary day-to-day contact for multiple clients across all forms of entertainment;
- Liaising with talent, studios, and film festival publicity teams;
- Staying current with new media trends and incorporating them into her work as appropriate; and
- Identifying and researching both paid and unpaid partnership opportunities for clients.

The Petitioner additionally explained that the Beneficiary will serve as a publicist in the firm’s “Film and Talent Department, where she will be responsible for overseeing the public relations [for] some of today’s most famous personalities.” Regarding the educational requirements, the Petitioner indicated that the position requires “a bachelor’s degree in a related field” including public relations, media, journalism, communications, English, or business.

C. Analysis

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

1. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

² The Petitioner submitted documentation to support the H-1B petition, 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.

³ We do not maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a

On the LCA submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Public Relations Specialist” corresponding to the SOC code 27-3031. The *Handbook* states, in pertinent part, about these occupations: “Public relations specialists typically need a bachelor’s degree in public relations, journalism, communications, English, or business.”⁴

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. As noted, the *Handbook* 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 in business. As discussed, we interpret the term “degree” to mean a degree *in a specific specialty* that is directly related to the proposed position. See *Royal Siam Corp.*, 484 F.3d at 147. Since there must be a close correlation between the required specialized studies and the position, a requirement of general and wide-ranging degrees in business and English strongly suggests that a public relations specialist position is not categorically a specialty occupation. See *id.* (a general-purpose business administration degree will not justify a conclusion that a particular position qualifies for classification as a specialty occupation). Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility.”).

The Petitioner contends that this range of fields (i.e., public relations, journalism, communications, English, or business) is limited because “each shares with the others numerous skills that their students will learn while studying them, skills such as writing, speaking, public presentation, professional relationships, networking, etc.” The Petitioner emphasizes the strong communication skills needed to perform the proffered position. However, these general statements are insufficient to establish how each field of study is directly related to the duties and responsibilities of the particular position such that the required “body of highly specialized knowledge” is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). For instance, the Petitioner did not submit information relevant to a detailed course of study leading to any of these degrees and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While we understand that strong communication skills are necessary to performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to obtain those communication skills.

proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁴ Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Public Relations Specialist, on the Internet at <https://www.bls.gov/ooh/media-and-communication/public-relations-specialists.htm#tab-4> (last visited Apr. 11, 2018).

We conclude that the Petitioner has not established that the proffered position is located within an occupational category for which a relevant, authoritative source indicates that the normal minimum entry requirement is at least a bachelor's degree in a specific specialty, or the equivalent. Moreover, the Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. The Petitioner therefore has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

2. 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) (emphasis added). The first prong contemplates common industry practice with regard to positions that are "parallel" to the one under consideration, while the alternative prong narrows its focus to the Petitioner's specific position.

a. 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 (considering these "factors" to inform the commonality of a degree requirement) (S.D.N.Y. 1989)).

The Petitioner provided eight job vacancy announcements placed by other companies that we reviewed. Notably, the Petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. Further, as they are only solicitations for hire, they are not evidence of what qualifications were ultimately required for the positions.

Moreover, some positions do not appear to be for parallel positions. In particular, the advertisement from [REDACTED] - which the Petitioner specifically highlights on appeal as being similar in terms of serving elite clientele - is for an assistant position which "will provide administrative support to a busy executive's desk" and perform such duties as "[s]upport department publicists," "[a]nswer high volume of phone calls," and "[a]ssemble client mailings and press kits." The Petitioner does not claim that the proffered position will perform the same type of administrative support duties. Further, the proffered position is for an entry-level position; however, some of the

other advertisements require several years of experience. For example, the advertisement from [REDACTED] is for a “senior account manager” position and requires a “minimum of five years of professional experience,” and, the advertisement from [REDACTED] requires a “minimum of 5 years” of experience. Thus, the Petitioner has not established that these job advertisements are for parallel positions.

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, as the evidence does not establish that similar organizations in the same industry routinely require at least a bachelor’s degree in a specific specialty, or its equivalent, for parallel positions, not every deficit of every job posting has been addressed.⁵

Accordingly, the Petitioner has not satisfied the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

b. Second Prong

We will now consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor’s degree in a specific specialty, or its equivalent.

When discussing H-1B employment, the Petitioner’s description must be comprehensive enough to properly ascertain the minimum educational requirements necessary to perform those duties. Although the Petitioner provided, in response to the RFE, a more extensive job description and letters from the Petitioner’s founder/president and partner, these documents do not sufficiently and consistently detail the complexity or uniqueness of the job duties. In those letters, the Petitioner acknowledged that “not all public relations firms require their publicists to hold a baccalaureate level of education,” but claimed that the Petitioner is “one of the many that does [have a baccalaureate degree requirement].” The Petitioner repeatedly stated that, due to the elite nature of its clientele, the duties of its particular publicist position “exceed industry standard.” It further stated that it “require[s] candidates to have significant experience in the specific industries of our clients . . . [and] an expert understanding of the film and television industry.”

At the same time, however, the Petitioner asserted that the proffered position is an entry-level position requiring “[a]t least one year of experience in public relations,” commensurate with a Level I, entry-level wage rate. Through the certified LCA, the Petitioner indicated that the proffered

⁵ Even if all of the job postings indicated that a bachelor’s degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from such a limited number of postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

position does not have duty, experience, education, and skill requirements beyond those typically required for other positions within the “Public Relations Specialists” occupation.⁶ It thus appears that the Petitioner is making incongruous assertions regarding the proffered position. Without more, the record does not sufficiently and consistently demonstrate the level of complexity and uniqueness of the proffered position.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references the Beneficiary’s education and experience as evidence that the proffered position is a specialty occupation. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor’s degree in a specific specialty, or its equivalent. Here, the Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position. Thus, it cannot be concluded that the Petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

3. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor’s degree in a specific specialty, or its equivalent, for the position.

To merit approval of the petition under this criterion, the record must establish that a petitioner’s imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were we limited solely to reviewing a petitioner’s claimed self-imposed requirements, then any individual with a bachelor’s degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor*, 201 F.3d at 388. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner’s past recruiting and hiring practices, as well as information regarding employees who previously held the position.

⁶ The Petitioner’s designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation* (particularly considering that the Petitioner itself acknowledges that not all publicist positions require a baccalaureate level of education). Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor’s degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor’s degree in a specific specialty, or its equivalent. That is, a position’s wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

Although the Petitioner stated that “we require our publicists to hold a baccalaureate level of education in journalism, communications, English, or business,” the Petitioner did not submit any independent, objective documentation (e.g., information about other publicists it employs and evidence of their educational credentials) to corroborate this claim. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

4. 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.

In support of the petition, the Petitioner provided information regarding the proffered position and its business operations. The Petitioner explained that “the role of publicist for [the Petitioner] in the Film & Talent Department is a specialty occupation by virtue of the fact that the organization’s business is representing A-List celebrity clients and major Hollywood film studios.” However, this generalized description of the Petitioner’s overall clientele and business operations does not give sufficient insight into the particular duties of the proffered position as it will be performed for the particular client(s) and whatever project(s) to which the Beneficiary will be assigned.

We also incorporate our earlier discussion regarding the Petitioner’s inconsistent descriptions about the proffered position’s claimed duty and educational requirement which “exceed industry standard.” Without more, the Petitioner has not demonstrated that the proffered duties are so specialized and complex that their performance requires the application of at least a bachelor’s degree level of a body of highly specialized knowledge in a specific specialty.

As the Petitioner did not sufficiently develop relative specialization and complexity as an aspect of the duties of the position, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

II. BENEFICIARY’S QUALIFICATIONS

As the Petitioner did not demonstrate that the proffered position is a specialty occupation, we need not fully address other issues evident in the record. That said, we wish to identify an additional issue to inform the Petitioner that this matter should be addressed in any future proceedings.

Specifically, the record does not currently demonstrate that the Beneficiary is qualified to perform the duties of the proffered position, if it were found to be a specialty occupation. See 8 C.F.R. § 214.2(h)(4)(ii)(C), (D). The Beneficiary holds a bachelor’s degree and a master’s degree in law from the [REDACTED] and a Certificate in Business and Management of Entertainment

from the [REDACTED] The Petitioner submitted the Beneficiary's foreign degree, foreign transcript, and a copy of her U.S. Certificate in Business and Management of Entertainment. Notably, the Petitioner did not provide a transcript or any other information about her U.S. certificate program. The Petitioner did not provide an evaluation of education to indicate that the Beneficiary's academic credentials are the equivalent to a U.S. bachelor's degree in one of the fields specified by the Petitioner, which does not include the field of law.

The record also does not currently demonstrate that the Beneficiary's combined education and work experience is the equivalent to a U.S. bachelor's degree in one of the fields specified by the Petitioner. While the Petitioner vaguely referenced the Beneficiary's prior internship and work experience with its company, it did not provide detailed information and documentary evidence establishing the nature of her duties, length of experience, and other relevant factors, as required. *See id.* Therefore, the record does not demonstrate that the Beneficiary is qualified to perform the duties of the proffered position by virtue of her education, or educational and work experience combined.

III. CONCLUSION

The Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of S- LLC*. ID# 1200849 (AAO Apr. 12, 2018)