U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26529967

Date: JUN. 22, 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 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 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. LAW

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) 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 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 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"). U.S. Citizenship and Immigration Services' (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 financial analyst. The petition included a certified labor condition application (LCA) certified for a position located within the "Financial

Analysts" occupational category corresponding to the Standard Occupational Classification code 13-2051.00. The proffered job description aligns generally with the duties of positions in this occupational category.

In its response to the Director's request for evidence (RFE) as well as at appeal, the Petitioner refers us to the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) for its educational requirements for its financial analyst position. The *Handbook* states that "Most entry-level positions for financial analysts require a bachelor's degree; a common field of degree is business."[1] Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Financial Analysts (Feb. 6, 2023), https://www.bls.gov/ooh/business-and-financial/financial-analysts.htm. So, consistent with the *Handbook*, we conclude that the Petitioner's stated educational requirement for entry to their financial analyst position is a bachelor's degree in business.

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 record of proceedings contains the Petitioner's stated requirements for the proffered position. As stated above, the Petitioner refers us at appeal as well as in their response to the RFE that their educational requirement is the same as that contained in the *Handbook*. The *Handbook*'s requirement for a bachelor's degree, preferably in business, without any additional specialization cannot support a specialty occupation. When a 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 like a bachelor's degree in business standing alone without any further specialization, is not a specialty. And this 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 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 degrees, such as those 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 with no additional

[1] The Petitioner also submitted other DOL sourced documentation in support of the H-1B petition, RFE and appeal to demonstrate that its proffered job is a specialty occupation. While we may not discuss every document submitted, we have reviewed and considered each one.

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 Court of Appeals for the First Circuit 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: elsewise, 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 requirement for bachelor's degree in business with no further specialization is not a requirement for 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.

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 consequently has satisfied neither the statutory definition of a "specialty occupation" at section 214(i)(1)(B) of the Act nor the term's regulatory definition 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)(*1*)-(*4*) cannot be satisfied. The 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. *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)(*1*)-(*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)(*1*)-(*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)(*1*)-(*4*).

We conclude that the proffered position here is not a specialty occupation because 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)(*1*)-(*4*). The Petitioner has not established that the proffered position is a specialty occupation.

B. Non-Corresponding Labor Condition Application

The 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, 8 U.S.C. § 1182(n)(1); 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) (noting that 20 C.F.R. § 655.705 requires USCIS "to check that the [H-1B] petition matches the LCA").

The Petitioner represented that their proffered job was a part-time position in the Form I-129 and the LCA. But, the Petitioner expects that the financial analyst will provide services between 5 and 40 hours per week. The regulations expect all employees working under 35 hours a week to be part time. The regulations permit an employer to demonstrate that a position is full time if an employee works within a range of 35 and 40 hours a week. But any employment that requires an employee to work 40 or more hours per week is full-time. *See* 20 C.F.R. § 656.736(a)(3)(A). The Petitioner's range obligates the employee to work a range of hours up to full-time 40 hours per week. An LCA certified for part-time employment cannot support a petition that requires the full-time employment of a beneficiary as is the case here. 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.