



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

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

In Re: 6503751

Date: MAR. 5, 2020

Appeal of Vermont Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (H-1B)

The Petitioner, an information technology company, seeks to temporarily employ the Beneficiary as a “product manager II” 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 proffered position does not qualify as a specialty occupation under the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, the Petitioner asserts that the record establishes the position satisfies the first three criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(3).

However, upon *de novo* review, we cannot determine the substantive nature of the proffered position, which precludes a determination of whether that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).¹ When determining whether a position is a specialty occupation, we review the H-1B petition and the supporting documents to ascertain the salient aspects of the proposed employment.² A crucial aspect of this matter is whether the Petitioner has submitted sufficient and consistent evidence describing the duties of the proffered position such that we may discern the nature of the position and whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. *See* sections 101(a)(15)(H)(i)(b), 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). The substantive nature of the work determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first

¹ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. Although we may not discuss every document submitted, we have reviewed and considered each one.

² We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.³ 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, U.S. Citizenship and Immigration Services must be able to determine the substantive nature of a proffered position's duties before it can determine whether such a position qualifies as a specialty occupation.

The Petitioner described its business as “specializing in real-time online advertising.” The Petitioner described the proffered “product manager II” position's duties as follows:⁴

- Lead the complex and technical full life cycle for products and services covering concepts, specification, design, launch, and enhancement phases of multiple offerings;
- Conduct in-depth, technical market research and engage with [the Petitioner's] key customers, prospective customers, and major partners to identify market needs and opportunities;
- Work closely with new business, sales, services, engineering, and advertising operations to understand and resolve product gaps;
- Consolidate, rationalize, and prioritize market requirements into a product road map to define the go-to-market strategy and timeline for product features and enhancements;
- Identify key success metrics;
- Design complex functional specifications and make key feature, resource, and timeline tradeoff decisions;
- Work closely with engineering leaders and their teams through all stages of the product development; and
- Create product roll out [*sic*] collateral including white papers, case studies, demos, and training material.

On the labor condition application (LCA)⁵ submitted in support of the petition, the Petitioner designated the proffered position in the “Architectural and Engineering Manager” occupational category, corresponding to the Standard Occupational Classification (SOC) code 11-9041.00 from the Occupational Information Network (O*NET). According to the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, “Architectural and Engineering Managers” typically “plan, direct, and coordinate activities in architectural and engineering companies.” Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Architectural and Engineering

³ As the lack of probative and consistent evidence in the record precludes a conclusion that the proffered position is a specialty occupation and is dispositive of the appeal, we will not further discuss the Petitioner's assertions on appeal regarding the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

⁴ The Petitioner submitted expanded duty descriptions. Although we omit the expanded descriptions for brevity, we have reviewed them in their entirety.

⁵ A petitioner submits the LCA to DOL 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 duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

Managers, <https://www.bls.gov/ooh/management/architectural-and-engineering-managers.htm#tab-2> (last visited Mar. 4, 2020).⁶ The position’s duty description, quoted above, does not address activities in an architectural or engineering company. In contrast, the description addresses “[conducting] in-depth, technical market research and engag[ing] with [the Petitioner’s] key customers, prospective customers, and major partners to identify market needs and opportunities”; “[working] closely with new business, sales, services, engineering, and advertising operations to understand and resolve product gaps”; and “[consolidating], rationaliz[ing], and prioritiz[ing] market requirements into a product road map to define the go-to-market strategy and timeline for product features and enhancements.” The duty description quoted above bears many similarities to those in the “Marketing Manager” occupational category, which include the following:

- Identify, develop, or evaluate marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors;
- Initiate market research studies or analyze their findings;
- Consult with product development personnel on product specifications such as design, color, or packaging;
- Recommend modifications to products, packaging, production processes, or other characteristics to improve the environmental soundness or sustainability of products; and
- Formulate, direct, or coordinate marketing activities or policies to promote products or services, working with advertising or promotion managers.

O*NET OnLine Summary Report for “11-2021.00 – Marketing Managers,” <http://www.onetonline.org/link/summary/11-2021.00> (last visited Mar. 4, 2020).⁷

The *Handbook*’s description of “Marketing Managers” also bears similarities as follows:

Marketing managers estimate the demand for products and services that an organization and its competitors offer. They identify potential markets for the organization’s products.

Marketing managers also develop pricing strategies to help organizations maximize their profits and market share while ensuring that the organizations’ customers are satisfied. They work with sales, public relations, and product development staff.

For example, a marketing manager may monitor trends that indicate the need for a new product or service. Then he or she may assist in the development of that product or service and to create a marketing plan for it.

⁶ 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. However, we do not maintain that the *Handbook* is the exclusive source of relevant information.

⁷ The position’s duties also bear similarities to those of other occupational categories, such as “Market Research Analysts and Marketing Specialists,” and “Information Technology Managers.” See O*NET OnLine Summary Report for “13-1161.00 – Market Research Analysts and Marketing Specialists,” <http://www.onetonline.org/link/summary/13-1161.00> (last visited Mar. 4, 2020); O*NET OnLine Summary Report for “15-1100.09 – Information Technology Managers,” <https://www.onetonline.org/link/summary/15-1199.09> (last visited Mar. 4, 2020).

Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Advertising, Promotions, and Marketing Managers, <https://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm#tab-2> (last visited Mar. 4, 2020).

We further note that the Petitioner repeatedly emphasized that “[t]he [B]eneficiary will draw upon the following courses completed during his Master’s Degree: . . . “Marketing[,] . . . Marketing Research[,] . . . Applied Marketing Management[,] . . . Global Marketing,” and other courses that correspond to “Marketing Managers” rather than “Architectural and Engineering Managers.” The discrepancy between the designated SOC code and the alignment of the position’s duties to other SOC codes raise questions regarding the position’s actual substantive nature.

We note that the record contains an opinion letter written by [redacted] a professor of marketing at [redacted] College. As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, we will give an opinion less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (“[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to ‘fact’ but rather is admissible only if ‘it will assist the trier of fact to understand the evidence or to determine a fact in issue.’”).

[redacted] based his opinion on his “review of extensive documentation pertaining to the position of Product Manager II with [the Petitioner] and the academic credentials of [the Beneficiary].” In his letter, [redacted] opines that “it would be impossible to handle the required job duties of the Product Manager II position with [the Petitioner] without at least a bachelor’s degree in Computer Science, Engineering, Business Administration, or a related analytical field.” However, [redacted] who we note is a professor of *marketing*, does not address the Petitioner’s peculiar designation of the position in the “Architectural and Engineering Managers” occupational category rather than the “Marketing Managers” occupational category, despite the duties’ emphasis on managing the Petitioner’s marketing.

Similar to the Petitioner’s duty description, discussed above, [redacted] observes that the Beneficiary “would draw upon his advanced education in strategic management, operations strategy, and microeconomics to conduct market research and engage with customers, prospects, and partners in order to identify market needs and opportunities”; “contribute to technical product roll-out efforts with [m]arketing, [s]ales, and other client-facing teams; and generate effective marketing collateral; “analyze market data and product/service requirements”; and “rely on and employ advanced concepts of operations strategy, markets analysis, strategic marketing planning, advertising, marketing, business statistics, branding, customer relationship management, competitive analysis, strategic business planning, product enhancement, strategic management, microeconomics, macroeconomics, and business communication.” [redacted]’s observations raise questions regarding the position’s actual substantive nature, similar to the Petitioner’s duty description. In any event, [redacted]’s opinion that disparate degree fields of computer science and business administration qualify workers for the position does not establish that the position requires a bachelor’s or higher degree *in a specific*

specialty, or its equivalent.⁸ Based on the concerns we addressed, and considered in light of the entire record, [redacted]'s opinion bears minimal probative value. See *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795.

In summation, we conclude that the record raises questions regarding the actual substantive nature of the proffered position, which therefore precludes a determination of whether the position qualifies as a specialty occupation.

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.

⁸ A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, we interpret the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. We have consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a conclusion that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147.