

Evaluating Specialty Occupation

Per 8 CFR 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To be consistent with INA section 214(i)(1)'s "degree in the specific specialty" requirement, and the definition of "specialty occupation" at 8 CFR 214.2(h)(4)(ii), the term "degree" as used above means not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the offered position.

Does This Meet Prong I?

Officers are reminded that we do not bear the burden of establishing that a particular position does not qualify as a specialty occupation. Instead, the petitioner bears the burden of establishing eligibility for the benefit sought.

We regularly review the Department of Labor's *Occupational Outlook Handbook (OOH)* on the duties and educational requirements of the wide variety of occupations that we address. Officers may not approve a petition based on inconclusive statements from the *OOH* about the entry-level requirements for a given occupation. However, we also do not maintain that the *OOH* is the exclusive source of relevant information in determining prong I. Rather, the petitioner bears the burden to submit probative evidence from objective and authoritative sources that the proffered position qualifies as an H-1B specialty occupation per one of the four prongs listed above.

Although the *OOH* speaks to occupational categories (e.g. Electrical Engineer, Computer Systems Analyst, etc.), prong I requires the petitioner to demonstrate that "the particular position" for which it is petitioning requires a baccalaureate or higher degree (or its equivalent) as the normal minimum for entry. As a result, the *OOH* is a mechanism for understanding what an occupational category normally requires, but does not itself directly speak to the petitioner's particular position. In other words, if the petitioner shows that the *OOH* states a baccalaureate degree is normally the minimum for entry into an occupational classification, the petitioner must also demonstrate that the occupational classification applies to the petitioner's particular position.

In simple terms, if a position does not meet prong I per our use of the *OOH*, the petitioner must establish that it either hits prong I via their own argument/documentation or that it hits prongs II, III, or IV via their own argument/documentation. Officers should be able to articulate which prong the petitioner has met and why.

Below are examples from the *OOH* to help indicate whether a position would typically meet prong I and the reasoning as to why or why not. A similar analysis can be applied to all positions listed in the *OOH*.

How to Become a Computer Systems Analyst

A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming.

Education

Most computer systems analysts have a bachelor's degree in a computer-related field. Because these analysts also are heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems.

Some employers prefer applicants who have a master's degree in business administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

ANALYSIS: A position involving typical duties for a computer systems analyst would not typically hit prong I based on the *OOH*. By indicating that "many" analysts have unrelated degrees or gained the requisite experience elsewhere, the *OOH* is inconclusive regarding the requirements for this position. Consequently, the petitioner has the burden of submitting other evidence and/or argument to establish the position meets one of the four prongs. Multiple, unrelated degrees, such as liberal arts, business, and computer science, would qualify an individual for this position. Therefore, the position cannot be said to require a degree in a "specific specialty" as is required.

How to Become a Computer Programmer

Most computer programmers have a bachelor's degree in computer science or a related subject; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages.

Education

Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree. Most programmers get a degree in computer science or a related subject. Programmers who work in specific fields, such as healthcare or accounting, may take classes in that field to supplement their degree in computer programming. In addition, employers value experience, which many students gain through internships.

ANALYSIS: A position involving typical duties for a computer programmer would not typically hit prong I based on the *OOH*. Because it indicates that an associate's degree, which is lesser than a bachelor's degree, would qualify an individual for this position, the *OOH* does not conclusively demonstrate that a bachelor's degree or higher in a specific specialty is required. Consequently, the petitioner has the burden of submitting other evidence and/or argument to establish the position meets one of the four prongs.

How to Become an Electrical or Electronics Engineer

Electrical and electronics engineers must have a bachelor's degree. Employers also value practical experience, so participation in cooperative engineering programs, in which students earn academic credit for structured work experience. Having a Professional Engineer (PE) license may improve an engineer's chances of finding employment.

Education

High school students interested in studying electrical or electronics engineering benefit from taking courses in physics and mathematics, including algebra, trigonometry, and calculus. Courses in drafting are also helpful, because electrical and electronics engineers often are required to prepare technical drawings.

In order to enter the occupation, prospective electrical and electronics engineers need a bachelor's degree in electrical engineering, electronics engineering, or electrical engineering technology.

ANALYSIS: A position involving typical duties for electrical or electronics engineers would typically hit prong I based on the *OOH*. A bachelor's degree in electrical engineering, electronics engineering, or electrical engineering technology is the minimum entry requirement. These fields are closely related, and the definitive language of the *OOH* is sufficient to establish that prong I is met.

How to Become a Market Research Analyst

Most market research analysts need at least a bachelor's degree. Top research positions may require a master's degree. Strong math and analytical skills are essential.

Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

ANALYSIS: A position involving typical duties for a market research analyst would not typically hit prong 1 based on the *OOH*. Though most market research analyst positions will require a bachelor's degree, the *OOH* further explains that a wide variety of backgrounds might also qualify. While it appears that a minimum of a bachelor's degree is required for this position, this bachelor's degree can be in multiple, unrelated fields, such as market research, statistics, math, computer science, business administration, the social sciences, or communications. Because this *OOH* description is inconclusive as to whether a degree "in a specific specialty" is required, the petitioner has the burden of submitting other evidence and/or argument to establish the position meets one of the four prongs.

Many Unrelated Degrees

Below are real-life cover letter excerpts that indicate that the particular position in that petition could be performed by an individual with a variety of unrelated degrees. These statements would typically indicate the position is not a specialty occupation. As above, the reasoning would be that if a variety of unrelated bachelor's degrees would qualify an individual for that particular position, a degree in a specific specialty is not required. A similar analysis can be applied to similar statements in all petitions.

Example 1:

To execute these sophisticated and financial professional functions, PETITIONER generally requires its POSITION TITLE to possess at least a Bachelor's degree or equivalent in Marketing, Business, Translation or a quantitative field of academic study. Only through the pursuance of this particular prerequisite educational training can an

Example 2:

The skills required to perform the specialty occupation:

The position of POSITION TITLE requires a theoretical and practical application of acquired specialized knowledge. As with any POSITION TITLE, the usual minimum requirement for performance of the job duties is a Master's or Bachelor's of Science in any discipline in Engineering, or computer science or information systems or a related analytic or scientific discipline or its equivalent in education or work-related experience.

Example 3:

JOB REQUIREMENTS

The minimum requirement for entry into the specialty occupation position of POSITION TITLE internally designated as Associate, as with any similar organization, is at least a Bachelor's degree in computer science, instrumentation science, information technology, management information systems, engineering, math, physics or a closely related field of study, or the equivalent thereof and experience. A Bachelor's degree in any of the mentioned fields, or its equivalent, provides the candidate with the necessary theoretical, analytical, and intellectual

Beneficiary's Degree Not Relevant

Finally, officers are reminded that a beneficiary having a particular bachelor's degree is not typically relevant to the specialty occupation determination. The evaluation of whether the position is a specialty occupation and whether the beneficiary is qualified for the position are two different determinations. For example, if we have a position for a market research analyst, and the beneficiary had a degree in market research, this, alone, would not affect the determination that the position is not typically a specialty occupation by prong I. The specialty occupation analysis focuses on the requirements of the proffered position, rather than the qualifications of the particular beneficiary.

GENERAL NOTES:

1. The O*Net only has information on which level of degree is required generally (associate's, bachelor's, master's, etc.), not if these degrees have to be in a specific specialty. Accordingly, the O*Net will not be able to establish that a position is a specialty occupation by prong I.
2. Each case will stand on its own merits and should be adjudicated by the preponderance of the evidence based on the totality of the evidence of the record.
3. All OOH information was as of August 31, 2017. The OOH should be accessed electronically to ensure the most updated data.