IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ENTEGRIS PROFESSIONAL SOLUTIONS, INC. 117 Jonathan Boulevard, North Chaska, MN 55318,	)	
Plaintiff,	)	Civil Action No.
v.	)	**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND REVIEW OF AGENGY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT**
UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, c/o Office of the General Counsel 245 Murray Lane, SW Mail Stop 0485 Washington, DC 20528-0485,	)	
L. Francis CISSNA, Director, U.S. Citizenship and Immigration Services, in his Official Capacity, c/o Office of the General Counsel 245 Murray Lane, SW Mail Stop 0485 Washington, DC 20528-0485,	)	
Defendants.	)	

INTRODUCTION

1. Plaintiff Entegris Professional Solutions, Inc. (EPS), a U.S. corporation, challenges the Defendants' arbitrary and unlawful decision to deny its petition for nonimmigrant "H-1B" status and accompanying extension of status request for a valued, highly educated and skilled foreign-born employee. Plaintiff EPS is a U.S.-based subsidiary of Entegris, Inc.

(Entegris), and handles the finance and information technology (IT) functions for the latter. It seeks to continue the employment of Divya Kandimalla, a native and citizen of India who, since 2012, has worked in H-1B status as a computer systems analyst, first for Entegris and most recently for Plaintiff EPS.

2. EPS included with the H-1B petition a request for extension of Ms. Kandimalla's stay in the United States in H-1B status (hereinafter 2018 H-1B Extension Petition). EPS seeks to continue employing her as a computer systems analyst, in a position entitled BI ("Business Intelligence") Business Analyst.

3. The H-1B visa classification allows highly skilled and educated foreign workers to work for U.S. employers in "specialty occupations"—that is, positions requiring the theoretical and practical application of a body of highly specialized knowledge, for which a bachelor's or higher degree in a specific specialty is required. Defendant U.S. Citizenship and Immigration Services (USCIS), which is responsible for adjudicating H-1B petitions, previously approved two H-1B petitions filed by Entegris on behalf of Ms. Kandimalla and a subsequent petition that EPS filed for her. All three petitions were for positions within the occupational classification at issue here, computer systems analyst.

4. Despite record evidence that Plaintiff EPS' BI Business Analyst position is in the Computer Systems Analyst occupation and that the latter is a specialty occupation, Defendants erroneously denied the petition. This decision—which is partially unintelligible as written—is replete with fundamental factual mistakes. Among these, Defendants mistakenly subject Plaintiff EPS to the standard for employment agencies seeking workers to place with third parties, despite clear evidence that EPS is not such an entity and seeks to fill a job within its own Finance and IT departments.

5. Defendants' decision also trivializes—without any discussion or analysis—substantial probative evidence detailing the job duties, their complexity, and why a BI Business Analyst employee of EPS must have at least a Master of Science degree in Computer Science, Computer Engineering, Electrical Engineering or a related field in order to perform them. This evidence meets the standard for demonstrating that the position falls within a specialty occupation.

6. Defendants also misinterpreted the regulatory requirements for demonstrating a specialty occupation, in contravention of the regulation's plain language. In doing so, they imposed a higher standard on Plaintiff EPS than the regulation requires.

7. Defendants acted in an arbitrary and capricious manner and contrary to law in denying the 2018 H-1B Extension Petition. As such, the Court should vacate the denial and approve the 2018 H-1B Extension Petition.

JURISDICTION

8. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*. and the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq*. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). This Court also has authority to grant declaratory relief under 28 U.S.C. §§ 2201-02, and injunctive relief under the APA. There exists between the parties an actual and justiciable controversy in which Plaintiff seeks declaratory and injunctive relief to protect its legal rights. The United States has waived its sovereign immunity under 5 U.S.C. § 702.

VENUE

9. Venue in this judicial district is proper under 28 U.S.C. § 1391(e)(1)(A), because this is a civil action in which the Defendants, respectively, are an agency of the United States and an officer of the United States acting in his official capacity, and they reside in this District.

EXHAUSTION OF REMEDIES

10. Defendant USCIS' November 6, 2018 denial of Plaintiff EPS' 2018 H-1B Extension Petition constitutes final agency action under the APA, 5 U.S.C. § 701, *et seq*. Neither the INA nor implementing regulations at 8 C.F.R. § 103.3(a) require an administrative appeal of the denial. Accordingly, Plaintiff has no administrative remedies to exhaust.

PARTIES

11. Plaintiff EPS is a U.S. corporation that employs 107 workers in the United States and performs the finance and information technology (IT) functions of its U.S.-based global parent company. It submitted the 2018 H-1B Extension Petition at issue here.

12. Defendant USCIS is a component of the Department of Homeland Security, 6 U.S.C. § 271, and an "agency" within the meaning of the APA, 5 U.S.C. § 551(1). USCIS is responsible for the adjudication of immigration benefits, including nonimmigrant visa petitions, and it denied the H-1B Extension Petition at issue here.

13. Defendant L. Francis Cissna is the Director of USCIS. In this role, he oversees the adjudication of immigration benefits and establishes and implements governing policies. He has ultimate responsibility for the adjudication of Plaintiff EPS' Petition and is sued in his official capacity.

LEGAL BACKGROUND

H-1B Petition Process

14. Section 101(a)(15)(H)(i)(b) of the INA provides for the admission into the United States of temporary workers sought by petitioning U.S. employers to perform services in a specialty occupation. 8 U.S.C. § 1101(a)(15)(H)(i)(b). This nonimmigrant classification is commonly referred to as "H-1B."

15. A "specialty occupation" is one that requires the "(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." 8 U.S.C. § 1184(i).

16. The H-1B classification has several prerequisites a U.S. employer must meet before filing a nonimmigrant visa petition with USCIS. One of relevance to this case is the statutory requirement that the employer file a Labor Condition Application (LCA) for certification by the U.S. Department of Labor (DOL). 8 U.S.C. § 1182(n)(1). The employer makes certain attestations in the LCA, which are intended to ensure that the employment of an H-1B worker will not have an adverse effect on the wages and working conditions of similarly-situated U.S. workers. *See* 8 U.S.C. §§ 1182(n)(1)(A)-(D).

17. The employer also must identify the Standard Occupational Classification (SOC) code, and the corresponding occupational classification for its job. For the BI Business Analyst job, EPS identified SOC Code 15-1121, which is the occupational classification for computer systems analyst. To provide data to DOL that it will pay the higher of the prevailing or actual wage (the required wage) for its job, the employer may obtain a prevailing wage from a DOL

online wage library, using the occupational classification, the job location and one of four wage levels depending on the employer's education and experience requirements.

18. When the U.S. employer files the H-1B nonimmigrant visa petition on the foreign national's behalf with USCIS, the employer must include the DOL-certified LCA. If the foreign national, like Ms. Kandimalla, is already in the United States in H-1B status, the petitioning employer also may designate in the petition that the foreign national is requesting an extension of stay in H-1B status.

19. Pursuant to statute, foreign nationals who were "previously issued a visa or otherwise provided [H-1B] nonimmigrant status" can begin working when the U.S. employer files an H-1B petition, rather than having to wait for petition approval, provided the petition is non-frivolous and other requirements are met. *See* 8 U.S.C. § 1184(n). The employment authorization continues until USCIS adjudicates the petition. *Id*. During this period, the foreign national is not in H-1B status, but in a "porting" status. *See id.*; 8 C.F.R. § 214.2(h)(2)(i)(H). If USCIS approves the H-1B petition with an extension of stay, the foreign national resumes her H-1B status. If USCIS denies the petition, the statutory "porting" employment authorization ends. *See* 8 U.S.C. § 1184(n); 8 C.F.R. § 214.2(h)(2)(i)(H)(2).

20. The maximum period of stay for a foreign national in H-1B status generally is limited to six years. 8 U.S.C. § 1184(g)(4). This period can be extended, however, where the H-1B beneficiary is at certain stages of the process toward obtaining legal permanent resident status. An employer who wishes to permanently employ an H-1B worker may file an employment-based immigrant visa petition on her behalf. If, as in Ms. Kandimalla's situation, an immigrant visa number was not available to her at the time EPS filed the immigrant visa petition,

and continues to be unavailable to her, the beneficiary still must wait for a visa number to become available before applying for permanent resident status. 8 U.S.C. § 1255(a).

21. In recognition of backlogs in immigrant visa number availability,[1] Congress enacted provisions allowing for the extension of H-1B status if the foreign national meets certain requirements associated with the process for acquiring lawful permanent residence. Relevant here, a beneficiary of certain employment-based immigrant visa petitions—such as that filed by EPS on behalf of Ms. Kandimalla and approved by USCIS—who is eligible for lawful permanent residence but for the fact that a visa is not yet available for her visa classification, may be granted an extension of stay for up to three years. *See* §104(c), American Competitiveness in the Twenty-First Century Act (AC21), Title 1, § 104(c), Pub. L. 106-313 (Oct. 17, 2000); 8 C.F.R. §214.2(H)(13)(iii)(E). USCIS may grant additional extensions in three-year increments until it adjudicates the foreign national's application for permanent residence. *Id.*

H-1B Requirements

22. For an H-1B classification, USCIS determines whether the petitioning employer's job qualifies as a specialty occupation and whether the beneficiary is qualified to perform the job duties required by the specialty occupation. *See* 8 C.F.R.§§ 214.2(h)(4)(i)(A)(1), (h)(4)(iii)(B)(3).

23. The agency regulation provides:

(A) Standards for specialty occupation position. To qualify as a specialty occupation, the position must meet one of the following criteria:

[1] Because Congress has set annual and per country limits on the number of visas available in each employment-based immigration visa category, *see* 8 U.S.C. §§ 1151-1153, there are too few visas available to meet the demand and a backlog exists.

> (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.

8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).

24. In assessing whether a position meets the first criterion, i.e., that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, USCIS adjudicators routinely consult the Occupational Outlook Handbook (OOH). USCIS recognizes the OOH as an authoritative source on the duties and educational requirements of certain occupations. The OOH is a DOL reference manual, updated every two years, which provides profiles about hundreds of occupations that represent a majority of the jobs in the United States. The occupational profiles describe, among other details, the typical education and training needed to enter the occupation. The O*Net is the "Occupational Information Network," which a state agency has developed and maintained under a DOL grant. The O*Net database is based on the SOCs and described on its website as "containing hundreds of standardized and occupation-specific descriptors on almost 1,000 occupations covering the entire U.S. economy." For occupations that O*Net has listed separately, such as computer systems analyst, O*Net has a "Job Zone" category, which includes an education entry. Computer systems analysts are in "Job Zone 4: Considerable Preparation Needed."

FACTUAL ALLEGATIONS

Plaintiff EPS

25. Plaintiff EPS is a subsidiary of Entegris, Inc. (Entegris), performing the latter's finance and IT functions. EPS has 107 employees, all within the United States. Entegris is a U.S.-based global company that develops, manufactures, and supplies microcontamination control products, specialty chemicals and advanced materials handling solutions for semiconductor and other high-technology industries. Entegris products and materials are used to manufacture semiconductors, micro-electromechanical systems, flat panel displays, light emitting diodes (LEDs), high-purity chemicals, solar cells, gas lasers, optical and magnetic storage devices, and crucial components for aerospace, glass manufacturing, and biomedical applications. Entegris has approximately 3,900 employees worldwide, with 1,923 in the United States. Entegris common stock is publicly traded on a United States stock exchange.

26. In April 2014, Entegris acquired ATMI, Inc. which, through a name change, became EPS. On October 25, 2015, EPS acquired all the finance and IT employees of Entegris, including its H-1B employees in these positions. By acquiring these H-1B employees, EPS became the successor-in-interest as to the H-1B petitions and LCAs that Entegris had filed in relation to these positions and employees and thus assumed all related obligations and liabilities. Ms. Kandimalla was one of these employees.

Kandimalla's history with Entegris and EPS

27. Ms. Kandimalla is a highly educated native of India. She holds a four-year Bachelor of Technology degree in Electrical and Electronics Engineering from Jawaharlal Nehru Technical University in India—a degree that a qualified evaluator employed by The Trustforte Corporation determined is the foreign equivalent of a four-year Bachelor of Science degree in

Electronic Engineering from an accredited U.S. college or university. She first came to the United States in 2005 on a student visa and, in December 2007, received a Master of Science degree in Electrical and Computer Engineering from Southern Illinois University.

28. Ms. Kandimalla began working in the United States in H-1B status in October 2008. After Entegris filed an H-1B petition on her behalf, Ms. Kandimalla left her prior H-1B employment and she began working for Entegris in September 2012 as an SAP Business Intelligence Developer, a job in the Computer Systems Analyst occupation.[2] USCIS approved this H-1B petition and a second that Entegris filed on Ms. Kandimalla's behalf. EPS acquired Ms. Kandimalla as an IT employee in October 2015 and filed an H-1B petition on her behalf as the successor-in-interest to Entegris. USCIS also approved this petition. The positions in all three petitions fell within the occupational classification of Computer Systems Analyst, SOC Code 15-1121.

29. Seeking to employ Ms. Kandimalla on a permanent basis, EPS also filed an immigrant visa petition on her behalf, one of several necessary steps for her to become a permanent resident of the United States. USCIS approved that petition as well. Once an immigrant visa number becomes available to her, Ms. Kandimalla will be able to apply to become a permanent resident. Due to statutory limits on visa numbers, however, she will have to wait years for a visa number to become available. *See* 8 U.S.C. §§ 1151(d), 1152, 1153(b). For that reason, and pursuant to AC21, § 104(c) and 8 C.F.R. § 214.2(H)(13)(iii)(E), EPS seeks to continue her employment as an H-1B worker in the interim.

[2] "SAP" stands for Systems Applications and Products.

The 2018 H-1B Extension Petition

30. On August 18, 2018, EPS filed the 2018 H-1B Extension Petition, which included a request for extension of Ms. Kandimalla's stay in H-1B status until October 23, 2021. The extension was justified because, despite an approved immigrant visa petition filed by EPS, Ms. Kandimalla cannot apply for permanent residence until a visa number becomes available to her. *See* AC21, § 104(c); 8 C.F.R. § 214.2(h)(13)(iii)(E).

31. In support of the 2018 H-1B Extension Petition, EPS included, among other evidence, a letter describing EPS, its relation to Entegris and acquisition of Entegris' Financial and IT departments, a detailed description of the BI Business Analyst job duties, the education, experience, and skill sets needed to perform the job, and Ms. Kandimalla's qualifications. EPS also confirmed that it has specific, non-speculative specialty occupation work for the time period requested.

32. EPS characterized the position as a change from that listed in the previously approved petitions. This reflected the fact that, in the course of her nine-plus years of business analytics experience, Ms. Kandimalla's responsibilities have progressed naturally. EPS made clear in its supporting letter that the BI Business Analyst job is a promotion based on Ms. Kandimalla's performance as SAP Business Intelligence Developer, although the position remains within the same occupational classification, Computer Systems Analyst. The BI Business Analyst job requires a Master of Science degree in Computer Science, Computer Engineering, Electrical Engineering or a related field plus three years of experience as a technical analyst or similar analyst or consultant position developing business objects universes and reports.

33. EPS attached evidence documenting EPS' history with and current relationship to Entegris, its acquisition of the Finance and IT employees, including those in H-1B status, its adoption of all obligations and liabilities relating to the H-1B files and LCAs filed by Entegris, which included Ms. Kandimalla and the files related to her H-1B status. EPS even provided Entegris' fiscal year 2017 annual report (Form 10-K) filed with the U.S. Securities and Exchange Commission (SEC), which contains information about Entegris' business operations, finances, and subsidiaries, including EPS.

34. On August 30, 2018, Defendant USCIS issued a request for evidence ("RFE") which erroneously sought information relevant only to third-party placement employment agencies, entirely overlooking the substantial evidence demonstrating the employer-employee relationship between EPS and Ms. Kandimalla. Specifically, the RFE questioned the existence of an employer-employee relationship and asked for documentation about the "projects" EPS would have for Ms. Kandimalla to work on "in-house" during the relevant period.

35. Notwithstanding the detailed description of job duties EPS submitted with its H-1B petition, USCIS also claimed in the RFE that the job duties were described "in relatively generalized and abstract terms" which purportedly resulted in there being insufficient evidence that the job requires "a specialty occupation's level of knowledge in a specific specialty." USCIS also claimed that the evidence EPS submitted was insufficient to meet any of the regulatory criteria for a specialty occupation.

36. In its RFE response, filed on or about October 29, 2018, Plaintiff EPS submitted additional evidence that the BI Business Analyst fell within a specialty occupation pursuant to each of the following: 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) (a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position);

(A)(2)(the second alternative) (the particular position is so complex or unique that it can be performed only by an individual with a degree); (A)(3)(the employer normally requires a degree or its equivalent for the position); and (A)(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 bachelor's or higher degree. Any one of these, standing alone, demonstrated that the position was a specialty occupation.[3]

37. Included within EPS' letter responding to the RFE was a nine-page chart that described with even greater detail the job duties of a BI Business Analyst, identified the percentage of time spent on each duty, and correlated the duties to the corresponding coursework Ms. Kandimalla completed, thus providing the educational foundation necessary for performance of each duty. See Exh. A, October 25, 2018 EPS letter in response to USCIS request for evidence, job duties chart, at 2-10.[4] For example, with respect to the job duty "Technical business warehouse development," which requires 18% of the BI Business Analyst's time, EPS identified eight tasks encompassed within it; the knowledge required to perform these tasks (e.g., "extensive knowledge on SAP ERP applications"); the relevant coursework from bachelor's and master's degree programs (e.g., "Advanced Computer Architecture (Masters): creating universes in BO universe designer …"); and finally, Ms. Kandimalla's work experience relevant to these tasks. *See* Exh. A, job duties chart, at 4.

38. EPS also submitted a current internal job description for the BI Business Analyst position and the descriptions for two similar positions within its IT department: a Business

[3] Although Plaintiff EPS also submitted evidence in support of the first alternative under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), it is not pursuing that claim here.

[4] This document and USCIS' denial, attached *infra* at Exh. B, contain redactions of personally identifiable information.

Warehouse Systems Analyst and a Systems Analyst, two jobs that are also classified within the computer systems analyst occupation.

39. EPS also submitted further evidence that it directly employed Ms. Kandimalla, including an organizational chart for its IT department; a photograph and rendered layout of EPS' offices; and further evidence of the parent-subsidiary relationship between Entegris and EPS (e.g., an Entegris and subsidiaries' legal entity organization chart and Entegris' Annual Report filed with the SEC and listing its subsidiaries, including EPS).

USCIS' denial of the 2018 H-1B Extension Petition

40. On November 6, 2018, Defendant USCIS denied EPS' 2018 H-1B Petition. The decision acknowledged that the position fell within the Computer Systems Analyst occupation as listed in the OOH but found that it was not a specialty occupation. The decision is unintelligible in parts; makes fundamental factual errors, notwithstanding abundant record evidence regarding these facts; and is based upon clear errors of law.

41. The decision includes unintelligible conclusions, such as:

> OOH and O*Net do not appear to indicate that a Computer Systems Analyst is an occupation that **does not require a bachelor's level of education** or higher or its equivalent in a specific specialty as a normal, minimum for entry into the occupation, and it does appear to delineate a *specific specialty* field.

Exh. B, USCIS denial of 2018 H-1B Extension Petition, at 4 (emphasis in original). Plaintiff EPS referenced the OOH and the O*Net to demonstrate that the Computer Systems Analyst occupation, within which its BI Business Analyst position falls, *does* normally require a bachelor's or higher level of education in a specific specialty. It is unclear from USCIS' use of a double negative whether USCIS is disputing this.

42. Similarly, the decision includes this unintelligible, and factually incorrect, statement:

> However, you did not make sufficient discussions and/or submitted documentary evidence showing the manner in which the broad descriptions of the duties you listed in your support letter directly relate to the position of a "Computer Occupation, All Other" as listed in the LCA [Labor Condition Application] that again you submitted to the Service as supporting evidence.

Exh. B at 4 (emphasis in original). EPS submitted only one LCA in support of its 2018 H-1B Petition Extension. That LCA listed the BI Business Analyst job as within the Computer Systems Analyst occupation, not within the "Computer Occupation, All Other" category. In another part of its decision, USCIS accepts that the position is within the Computer Systems Analyst occupation. *See* Exh. B at 8.

43. Despite submitting additional RFE evidence that EPS employed Ms. Kandimalla directly to work on its premises full-time, USCIS misapprehended the relationship, erroneously treating EPS as an employment agency responsible for placing H-1B workers with its clients. Specifically, USCIS stated that it could not accept EPS' evidence as to its education requirement for the BI Business Analyst job because "[t]he degree requirement should not originate with the employment agency who brought the beneficiary(ies) to the United States for employment with its client(s)." As amply supported by the record, EPS employs Ms. Kandimalla in-house to work full-time on its premises. It is not an employment agency.

44. USCIS misstates the law in concluding that, while a showing that at least one of the requirements in 8 C.F.R. § 214.2(h)(4)(iii)(A) is necessary to establish that the job falls within a specialty occupation, such a showing is not sufficient to satisfy the statutory definition. This interpretation contravenes the plain language of the regulation, *id.* ("To qualify as a specialty occupation [as defined in 8 U.S.C. § 1184(i)], the position must meet one of the following criteria: ….") and would impermissibly impose evidentiary requirements beyond those required by Congress. *See* Exh. B at 2 (stating that the regulatory criteria are "supplemental" to

the statutory definition). By satisfying all four of the regulatory criteria, EPS demonstrated that its job is in a specialty occupation.

45. USCIS's analysis of the facts and law with respect to each of the regulatory prongs is replete with errors. With respect to the first regulatory criterion, 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), USCIS incorrectly imposes the need for an individualized showing that the employer's position satisfies the specialty occupation definition, when what is required under this criterion is a showing that a "bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position." USCIS also misreads the OOH and the O*Net in analyzing this criterion and fails to properly consider and credit Plaintiff EPS' evidence.

46. As to the second prong of the second regulatory criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), USCIS misrepresents EPS' job description as "generic in nature and provid[ing] no further detail as to the unique or complex nature of the proffered position" (Exh. B at 6-7)—a conclusion that is belied by the record evidence. *See, e.g.*, Exh. A, job duties chart, at 2-10. USCIS also erroneously imposes a nonexistent requirement, i.e., that EPS demonstrate that its job is more complex or unique than similar positions in the industry. All that this criterion requires, however, is a showing that the "particular position is so complex or unique that it can be performed only by a person with a degree." 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The record evidence, ignored by USCIS, demonstrates this.

47. As to the third regulatory criterion, 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3) (requiring a showing that the employer normally requires a degree or its equivalent), USCIS' interpretation renders the criterion meaningless by indicating that it cannot accept evidence of EPS' normal practice as sufficient—notwithstanding the plain language of the regulation. Additionally,

USCIS misstates the facts, claiming that EPS normally requires a bachelor's degree for the proffered position, when the evidence demonstrates that EPS requires a Master of Science degree in Computer Science, Computer Engineering, Electrical Engineering or a related field and filed its LCA as a Level IV, the highest prevailing wage for the occupation, based on the job's minimum education and experience requirements. USCIS also again mistakes EPS for an employment placement agency, stating that it would not be "limited" to EPS' evidence because it "must examine the ultimate employment of the [foreign national]." Exh. B at 7.

48. As to the fourth regulatory criterion—that the nature of the specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with attaining a bachelor's or higher degree, 8 C.F.R. § 214.2 (h)(4)(iii)(A)(4)—USCIS again mischaracterizes the evidence as providing only a "generalized and abstract" job description. Exh. B at 7. USCIS also stated that EPS failed to demonstrate how its duties were more specialized and complex than those " 'normally performed' by Computer Systems Analyst[s]." *Id*. The criterion does not require any such comparison and USCIS' contention is undercut by its earlier acknowledgement that the OOH does not preclude a particular computer systems analyst from qualifying as a specialty occupation. Rather, EPS met this criterion with evidence demonstrating the specialized and complex nature of its job duties, including an explanation of how the education requirement is utilized to perform the job duties.

49. Under 5 U.S.C. §§ 702 and 704, Plaintiff EPS has suffered a "legal wrong" and has been "adversely affected or aggrieved" by agency action for which there is no adequate remedy at law.

50. EPS has a need for Ms. Kandimalla to work in the offered position because she has a wealth of experience as a Business Intelligence developer. She has been working in the

same or similar occupation in H-1B status for EPS and its parent company Entegris since 2012. Three H-1B petitions were previously approved within the last 6 years. Ms. Kandimalla has over nine years of business analytics experience in the field, and in recognition of her superior performance, qualifications, and experience, EPS promoted her to the role of BI Business Analyst. EPS has made substantial investment in Ms. Kandimalla over the course of her employment with the company. Given Ms. Kandimalla's significant experience and specialized knowledge, EPS will be negatively impacted without her employment, resulting in major loss of time and capital.

COUNT ONE

Violation of the Administrative Procedure Act
5 U.S.C. § 701, et seq.

51. Plaintiff re-alleges and incorporates herein by reference, as if fully set forth herein, the allegations in paragraphs 1-50 above.

52. Plaintiff is entitled to review by this Court pursuant to 5 U.S.C. §§ 701-706.

53. A reviewing court shall "hold unlawful and set aside agency action . . . found to be—arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

54. Defendants denied the 2018 H-1B Extension Petition solely on the ground that the evidence in the record was insufficient to establish that Plaintiff EPS' BI Business Analyst position is in a specialty occupation.

55. Plaintiff EPS submitted evidence demonstrating that the position satisfied all four of the alternative regulatory criteria for demonstrating a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).

56. Defendants failed to properly consider all record evidence; reached factual conclusions unsupported by any evidence in the record; misread the relevant OOH and O*Net entries; misconstrued the governing regulations; and erroneously concluded that Plaintiff EPS had not demonstrated that the BI Business Analyst position fell within a specialty occupation.

57. Defendants' errors, singly and in combination, were arbitrary, capricious and in violation of the law. Consequently, Defendants acted arbitrarily, capriciously, and contrary to the law in violation of the APA by denying Plaintiff EPS' 2018 H-1B Extension Petition.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

1. Declare that Defendants' determination that evidence submitted by Plaintiff EPS was insufficient to establish that the BI Business Analyst position is in a specialty occupation was arbitrary and capricious, and not in accordance with law, in violation of the APA. 5 U.S.C. § 706(2)(A);
2. Vacate the denial of the 2018 H-1B Extension Petition and remand this matter to Defendants with instructions to approve the Form I-129, Petition for Nonimmigrant Worker filed by Plaintiff EPS and extend the beneficiary's stay in H-1B status until and including October 23, 2021, within ten days of the date of the Court's Order;
3. Award Plaintiff its costs in this action; and
4. Grant such other relief as the Court deems just, equitable and proper.

Dated: December 19, 2018

Respectfully submitted,

s/ Leslie K. Dellon
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