



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

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

In Re: 8935865

Date: JUNE 17, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, an event and trade show service company, seeks to temporarily employ the Beneficiary as a “quality assurance manager” under the H-1B nonimmigrant classification for specialty occupations.<sup>1</sup> 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 record did not establish that the proffered position qualifies as a specialty occupation. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.<sup>2</sup> We review the questions in this matter *de novo*.<sup>3</sup> Upon *de novo* review, we will dismiss the appeal.

**I. 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:

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<sup>1</sup> Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

<sup>2</sup> Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

<sup>3</sup> See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

- (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”).

## II. ANALYSIS

The Petitioner designated the proffered position on the labor condition application (LCA) as a Standard Occupation Classification (SOC) code 15-1199 “Computer Occupations, All Other” occupation. It further specified that its “quality assurance manager” position is consistent with the duties of the “Software Quality Assurance Engineers and Testers” corresponding to SOC code 15-1199.01.<sup>4</sup>

Upon review of the record in its totality and for the reasons set out below, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.<sup>5</sup> Specifically, we conclude that the Petitioner has not established the substantive nature of the work that the Beneficiary will perform due to a lack of specificity in its description of the duties and material inconsistencies contained within the record of proceeding. Because the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, we are precluded from determining that the proffered position satisfies any of the regulatory specialty-occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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<sup>4</sup> The Petitioner classified the proffered position at a Level II wage. A wage determination starts with an entry-level wage (Level I) 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. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>5</sup> 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.

The documentation in the record indicates that the Petitioner is one of several subsidiaries and affiliates belonging to a parent company that offers a variety of services, including those for events and trade shows. The Petitioner submitted extensive documentation in the form of promotional materials and press releases concerning the parent company and its various subsidiaries and affiliates. This documentation describes many technologies that the parent company offers through its subsidiaries and affiliates, including various mobile apps, event badge production, event access through mobile phone scanning, virtual reality, gaming, and multiple attendance tracking options, to name a few. The Petitioner supplied information about the parent company's various technologies collectively and it is unclear where the proffered position fits in with the myriad of technologies presented.

In examining the proffered position description, we note very few references to how the quality assurance and testing duties relate to the specific technologies presented. The duties reference the testing of software, applications, and web technologies, but the Petitioner has not clarified what specific products or services are encompassed in the duties of the proffered position. We do not know, for example, if the Beneficiary will work on technologies that belong to one of the subsidiaries of the parent company, whether the Beneficiary's duties will involve those technologies controlled by the Petitioner, or even whether the Beneficiary will work on software, applications, and web technologies belonging to the clients that utilize the Petitioner's event services.

Additional uncertainty concerning the nature of the duties arises due to unclear descriptions of which technologies would be considered the Petitioner's and which belong to the other subsidiaries, as well as whether any crossover between them exists.<sup>6</sup> Further, the Petitioner does not clearly explain how its technologies interact with or relate to the software, applications, and web technologies utilized by the clients who access the Petitioner's services. Finally, it is entirely unclear whether the duties of the proffered position involve work for the Petitioner's clients, the parent company's clients, other subsidiaries' clients, or some combination thereof.<sup>7</sup> If we cannot ascertain the platforms and technologies upon which the Beneficiary will work, we cannot make any determinations as to the nature of the position, let alone whether it is specialized, complex, or unique.

In addition to the above, a crucial aspect of this matter is whether the duties of the proffered position are described in such a way that we may discern the actual, substantive nature of the work to be performed. As described, some of the duties are vague and general. The duty of "managing and supporting the planning, design and execution of system testing on simple to complex implementations" does not contain an explanation of what the Beneficiary will do to manage and support, nor does the Petitioner define what "simple to complex implementations" are. Similarly, the Petitioner has included "[e]xperience working with different software methodologies" and "[h]ave a thorough understanding of the Software Development Lifecycle" in its list of duties. The Petitioner

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<sup>6</sup> We note that some printouts contain the name of the Petitioner at the bottom, while other printouts contain the names of subsidiaries or affiliates, such as [REDACTED] [REDACTED] and [REDACTED]. Using the names in the printouts as a guide, we can ascertain what technologies the Petitioner might control, but it is unclear why the Petitioner submitted evidence of subsidiary technologies if the proffered position will not involve them.

<sup>7</sup> The Petitioner provided a position evaluation opinion letter from [REDACTED], a professor in the Department of Computer and Information Science at [REDACTED] College, [REDACTED]. [REDACTED]'s opinion restates the duties provided by the Petitioner but does not clarify the substantive nature of the position. In his letter, he summarizes the Petitioner's services including event badging, registration, and attendance tracking, but he lends little insight into which technologies the Beneficiary will work on and for whom.

has not clarified why these items are duties, as they appear to be more properly categorized as qualifications for the position.

The Petitioner states that the Beneficiary will “[v]erify client-side input validation built using the jQuery JavaScript library and CSS to verify it matches the UI requirements.” In addition to not stating who the clients or users are, the Petitioner has not provided sufficient information concerning this duty to know what this duty actually involves. The Petitioner’s descriptions of other duties contain significant jargon such that it is unclear what the duty includes. For example, “[v]erify application code protects against SQL Injection attacks via user data input” and “[p]rint testing of dynamically-scaled content via JavaScript” do not sufficiently convey the Beneficiary’s day-to-day activities regarding these duties.

Though Petitioner provided the approximate percentage of time the Beneficiary will spend on each duty, these percentages lead to further confusion. The duties indicate that the proffered position involves many testing functions, however, it is unclear why “regression testing,” “integration testing,” and “system testing” appear in multiple areas with different percentages. If the quality or nature of these tests change such that they belong in different categories with different percentages, the Petitioner has not explained why or how. Therefore, it is unclear how much time will be spent on these testing duties.

The Beneficiary’s work product documents also do not lend clarity to the nature of the proffered position. The documents contain lists of different tests performed and different steps involved in a given function, but neither the Petitioner nor the documentation itself relate the lists and steps to any specific product. Several of the work product documents feature various third-party technologies, database queries, and what appears to be coding or scripting. The Petitioner has not explained how this work is specialized, nor has it clarified how this work fits into the context of the Petitioner’s business. As such, we cannot ascertain the true nature of what this work product represents.

As detailed above, the record of proceedings lacks sufficient documentation evidencing what exactly the Beneficiary would do for the period of time requested. Several other inconsistencies in the record further confuse the nature of the proffered position. The Petitioner stated that to perform the duties of the proffered position, it requires a minimum of a bachelor’s degree in computer science or a closely related field. In response to the Director’s request for evidence (RFE), the Petitioner stated that the position requires a “Bachelor of Technology - Computer Science & Engineering.” The Petitioner has not explained or acknowledged the change. Additionally, the Petitioner provided an organizational chart in its RFE response which suggests that the Beneficiary will supervise or manage a quality assurance analyst. On appeal, another organizational chart features the quality assurance analyst as a lateral position in relation to the Beneficiary’s position. As such, we do not know whether the Beneficiary will manage another person, nor do we know if the quality assurance analyst position is the same or different than the quality assurance manager position. At minimum, the inconsistency raises questions as to the nature of the proffered position.

Uncertainty as to whether the LCA corresponds to and supports the H-1B petition further impedes our determination of the substantive nature of the position. The Petitioner selected the Level II wage as consonant with the job requirements, necessary experience, education, special skills/other

requirements, and duties of the proffered position.<sup>8</sup> However, questions arise when examining the job postings submitted by the Petitioner in its RFE response. While the Petitioner contends these positions are parallel to the proffered position and that the employers are similar organizations operating in the same industry, many of the positions require extensive experience beyond a bachelor's degree. The record includes two postings from Experient, one requiring a bachelor's degree or master's degree in computer science, computer engineering, or software engineering, along with two years of experience. The other posting indicates that Experient accepts any bachelor's degree but that it requires three to seven years of experience. The Petitioner also submitted six job postings from Cvent that indicate the employer requires a bachelor's or master's degree and years of experience ranging from two years up to eleven years, with most positions in the grouping requiring at least five years of experience in addition to the degree.<sup>9</sup> The Petitioner also supplied a description of a position within one of the parent company's affiliates. Though the Petitioner states that this position parallels the proffered position, the affiliate requires a master's degree in computer science or engineering along with eight to ten years of experience.

If these are parallel positions as claimed, then the Petitioner has not resolved how payment of a Level II wage to the Beneficiary correlates to the experience the position requires. If alternatively, the positions are not parallel, but rather represent a different or more specialized position than the proffered position, then the postings have no relevance in establishing an industry standard for positions located within the occupational category. In either instance, the LCA appears inconsistent with the Petitioner's claims and the evidence within the record. These inconsistencies prevent us from discerning the substantive nature of the proffered position.

The Petitioner has submitted inconsistent descriptions and insufficient evidence concerning the proposed position. These deficiencies obfuscate the actual substantive nature of the work to be performed by the Beneficiary, which therefore precludes a conclusion that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). This is material because it is the substantive nature of that work that 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 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.

Upon review of the totality of the record, we cannot ascertain the Beneficiary's actual assignment for the validity period requested, her actual day-to-day duties, or whether those duties encompass specialty occupation work. Accordingly, the record does not establish that the duties of the proposed position satisfy the statutory and regulatory definitions of a specialty occupation.

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<sup>8</sup> The employer's requirements for experience, education, training, and special skills shall be compared to those generally required for an occupation as described in O\*NET. If there are any requirements above those generally required for an occupation, then one or more points should be added to the appropriate wage column(s). *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *supra*.

<sup>9</sup> None of the postings specify whether the required experience may be gained concurrently. The minimum and maximum range possible are noted for brevity.

### III. CONCLUSION

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.

The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is a 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.