



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

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

In Re: 8843415

Date: JUNE 2, 2020

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a “utilization review coordinator” 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 evidence of record does not establish that the Beneficiary is qualified to perform the duties of the proffered position.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Upon *de novo* review, the decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

As noted, the Director concluded that the record did not establish that the Beneficiary was qualified to perform services in the proffered position. However, we find the conclusion premature, as the record of proceedings at the current time is not sufficiently developed so as to allow us to determine whether the proffered position is actually located within the occupational category for which the labor condition application (LCA) was certified. Without knowing the answer to that question, we cannot determine the actual, substantive nature of the position, which means that as this record currently stands, we cannot determine if the proffered position is a specialty occupation.<sup>1</sup> We therefore are

---

<sup>1</sup> U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988). (“The facts of a beneficiary’s background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].”).

remanding this matter so that the Director can determine whether the LCA was certified for the appropriate occupational category and therefore corresponds to and supports this H-1B petition.

The purpose of the LCA wage requirement is “to protect U.S. workers’ wages and eliminate any economic incentive or advantage in hiring temporary foreign workers.”<sup>2</sup> It also serves to protect H-1B workers from wage abuses. A petitioner submits the LCA to the Department of Labor (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). While DOL certifies the LCA, U.S. Citizenship and Immigration Services (USCIS) determines whether the LCA’s content corresponds with the H-1B petition. *See* 20 C.F.R. § 655.705(b) (“DHS determines whether the petition is supported by an LCA which corresponds with the petition,....”).

On the LCA, the Petitioner designated the proffered position under the occupational category for “Statisticians,” (and specifically, the included occupation of Clinical Data Managers) corresponding to the Standard Occupational Classification (SOC) code 15-2041. The Petitioner selected a Level I wage as consonant with the job requirements, necessary experience, education, special skills, and other requirements of the proffered position.

When comparing the proposed duties of the proffered position to those provided in the Occupational Information Network (O\*NET), it is not clear that the Petitioner selected the appropriate SOC code for the proffered position. The DOL’s “Prevailing Wage Determination Policy Guidance” provides clear guidance for selecting the most relevant O\*NET occupational code classification, as follows:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer’s job offer and determine the appropriate occupational classification. The O\*NET description that corresponds to the employer’s job offer shall be used to identify the appropriate occupational classification . . . . If the employer’s job opportunity has worker requirements described in a combination of O\*NET occupations, the NPWHC should default directly to the relevant O\*NET-SOC occupational code for the highest paying occupation. For example, if the employer’s job offer is for an engineer-pilot, the NPWHC shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

According to O\*NET, clinical data managers (SOC code 15-2041.02) generally:

Apply knowledge of health care and database management to analyze clinical data, and to identify and report trends.

---

<sup>2</sup> *See* Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-56).

O\*NET also contains an entry for medical and health services managers (SOC code 11-9111).<sup>3</sup> Medical and health services managers generally:

Plan, direct, or coordinate medical and health services in hospitals, clinics, managed care organizations, public health agencies, or similar organizations.

The Director should therefore compare the job descriptions the Petitioner provided in its initial filing, and in response to the request for evidence to the complete list of “tasks” provided for 1) clinical data managers, 2) medical and health services managers, and 3) any other related occupations in O\*NET to determine whether the Petitioner selected the most appropriate SOC code.

It is important to note that Petitioner relied on the Foreign Labor Data Center (FLDC aka OFLC Online Data Center) for the prevailing wage. For example, according to the FLDC, the prevailing wage the Petitioner used for clinical data managers at the time of filing for the location of employment was \$25.87/hour at a Level I, which is significantly lower than the \$36.24/hour prevailing wage for medical and health services managers.

The Director should then determine whether the Petitioner’s selection of a Level I wage was correct.

If the Director determines that the submitted LCA *was* in fact certified under the appropriate occupational category and wage level and therefore *does* correspond to and support the H-1B petition, and that the actual, substantive nature of the proffered position has been established, then the Director should determine whether the proffered position qualifies as a specialty occupation.

Accordingly, the matter will be remanded to the Director to consider the LCA issue and enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue, and we express no opinion regarding the ultimate resolution of this case on remand.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

---

<sup>3</sup> See <https://www.onetonline.org/link/summary/11-9111.00>.