



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

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

In Re: 9140653

Date: JULY 2, 2020

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker

The Petitioner, a software development and consulting services provider, seeks to temporarily employ the Beneficiary as a “software engineer” 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 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. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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:

- (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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

As recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

II. THE PROFFERED POSITION

The Petitioner, which is located in Texas, stated that the Beneficiary will perform his duties at an offsite location in Michigan for [REDACTED] (end-client). The path of contractual succession for the offsite work flows from the Petitioner to the mid-vendor and concludes with the end-client.

III. ANALYSIS

For the reasons set out below, we have determined that the proffered position does not qualify as a specialty occupation. Specifically, the record does not: (1) describe the proffered position in sufficient detail; and (2) establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

¹ The Petitioner submitted documentation in support of 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.

As recognized in *Defensor*, 201 F.3d at 387-88, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location in order to properly ascertain the minimum educational requirements necessary to perform those duties. Here, the record of proceedings does not provide sufficient information from the end-client regarding the specific job duties to be performed by the Beneficiary.

The Petitioner submitted a letter from the end-client confirming that the Beneficiary will be working for them as a software engineer assigned to the [REDACTED] project. The letter, however, describes the Beneficiary's job duties in brief, generalized terms that fail to convey the substantive nature of the proffered position and its constituent duties. For example, the end-client's letter stated that the Beneficiary would perform duties such as, participate in code reviews; participate in requirements document reviews; and participate in software architecture and design document reviews, without providing any additional explanation regarding the level of participation. Similarly, the letter includes language about systems and performing work in those systems, but the information is not clear and the context cannot be discerned. Such duties do not include a sufficient explanation regarding the demands, level of responsibilities, complexity, or requirements necessary for their performance.

The Petitioner's brief list of job duties and percentage of time the Beneficiary would devote to overall functions similarly fails to convey the substantive nature of the proffered position and its constituent duties. Of additional concern, the percentages of time allocated to the listed duties amount to 120% of the Beneficiary's time in the proffered position. The Petitioner did not provide any explanation for this inconsistency.

Neither the Petitioner's statements, nor the end-client's letter, provide sufficient insight into the Beneficiary's actual duties, nor do they include details regarding the specific tasks that the Beneficiary will perform as they relate to an assigned project. The provided information does not demonstrate how the performance of these duties, as described in the record, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

Overall, the Petitioner has not provided sufficient details regarding the nature and scope of the Beneficiary's employment or substantive evidence regarding the actual work that the Beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The position as described does not communicate: (1) the actual work that the Beneficiary would perform; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level of knowledge in a specific specialty.

As a result, the Petitioner has not established the substantive nature of the work that the Beneficiary will perform. This precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines: (1) the normal minimum educational requirement for the particular position, which is the focus of criterion one; (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 two; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong

of criterion two; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion three; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion four. Therefore, we cannot conclude that the proffered position qualifies for classification as a specialty occupation.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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.