



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

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

In Re: 8768234

Date: JUNE 8, 2020

Appeal of California Service Center Decision

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

The Petitioner, a provider of computing products and services, seeks to temporarily employ the Beneficiary as an “accounts manager 2 – inside sales renewals” 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 Director of the California Service Center denied the petition, concluding that the record did not establish (1) the substantive nature of the proffered position, (2) the proffered position qualifies as a specialty occupation, and (3) the Beneficiary is qualified to perform the duties of a specialty occupation. On appeal, the Petitioner asserts that the Director erred in denying the petition.

Upon *de novo* review, we will withdraw the decision of the Director.<sup>1</sup> The matter will be remanded for further review and entry of a new decision.

## I. ANALYSIS

As noted above, the Director concluded, in part, that the record did not establish the substantive nature of the position. Specifically, the Director determined that the Petitioner’s job description “does not adequately convey the substantive work that the beneficiary will perform.” Upon review of the entire record, however, we have determined the submitted evidence, including the Petitioner’s April 22, 2019 letter, sufficiently explains and expands upon the proffered position’s duties, such that on the issue of the substantive nature of the position, the Petitioner has met its burden. Accordingly, the Director’s decision as to the substantive nature of the position is withdrawn.

However, it appears that the Petitioner’s description of the proffered position’s duties does not correspond to the occupational category designated on the labor condition application (LCA).<sup>2</sup> The

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<sup>1</sup> We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

<sup>2</sup> While the Department of Labor 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,...”).

Director should, therefore, determine whether (1) the record sufficiently establishes that the petition is supported by an LCA that corresponds with the petition and (2) the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(I), which requires a certified LCA for the Beneficiary's occupational specialty prior to the filing the H-1B petition, has been met.<sup>3</sup>

The Petitioner described the duties of the proffered position and the percentage of the Beneficiary's time spent on each duty, as follows:

- Validate, configure, and document associated [ ] software, hardware, and service solutions to meet customer and sales objectives [20%];
- Assess hardware and software configuration of original array and upgrades added later [15%];
- Assist in the analysis, design, and development of fully integrated technology solutions before creating a renewal contract [10%];
- Analyze technical customer renewal inquiries with the goal of maintaining or upgrading existing customers' products and services [5%];
- Provide technical leadership and direction to customers and internal staff for entire stack in support of post-sales activities in the assigned market [5%];
- Technically assess hardware capabilities, software requirements and systems integration [5%];
- Provide contract guidance to account executives, channel partners and end-user customers with respect to [ ] legacy Storage Products [3%];
- Analyze and validate Contract pricing structure [3%];
- Ensure competitiveness of company's maintenance contracts in line with similarly situated storage solution manufacturers [3%];
- Understand [ ] and competitive technology and business applications within the assigned market [5%];
- Work with Sales Team to develop and implement specific account penetration strategies, produce account specific product and service and sales plans [5%];
- Conduct quality solution presentations and develop pricing, negotiate, and close deals with clients [5%];
- Meet specific sales goals put forth by sales management [5%];
- Ensure timely maintenance of contract renewal, and promote awareness of upgrade in service level and add-on opportunities to customers [3%];
- Ensure timely contract renewal and promote awareness of upgrade and add-on opportunities to customer<sup>4</sup> [3%];
- Implement and oversee contract renewal initiatives for Enterprise accounts in assigned region [2%];

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<sup>3</sup> A petitioner submits the LCA to U.S. Department of Labor 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).

<sup>4</sup> We note that this job duty is virtually identical to the preceding job duty.

- Anticipate technology and/or market trends and provide guidance on their application to external customers and feedback of business requirements back into [redacted]'s engineering and marketing organizations [2%]; and
- Update Salesforce CRM with renewal sales activities on a daily basis [1%].

On the LCA, the Petitioner designated the proffered position under the occupational category for sales representatives, wholesale and manufacturing, technical and scientific products, corresponding to the Standard Occupational Classification (SOC) code 41-4011.<sup>5</sup> The Petitioner selected a Level I wage as corresponding to the job requirements, necessary experience, education, special skills, and other requirements of the proffered position. When comparing the duties of the proffered position to those provided in the Occupational Information Network (O\*NET), it does not appear 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, sales representatives, wholesale and manufacturing, technical and scientific products generally:

Sell goods for wholesalers or manufacturers where technical or scientific knowledge is required in such areas as biology, engineering, chemistry, and electronics, normally obtained from at least 2 years of post-secondary education.<sup>6</sup>

O\*NET provides a list of 34 tasks related to the occupation for a sales representatives, wholesale and manufacturing, technical and scientific products. While we acknowledge that some of these tasks may relate to the duties of the proffered position, it appears that the O\*NET entry for sales engineers (SOC code 41-9031) is more closely aligned with the position.<sup>7</sup> According to O\*NET, sales engineers generally:

Sell business goods or services, the selling of which requires a technical background equivalent to a baccalaureate degree in engineering.

Of the 21 tasks listed for a sales engineer, the following 16 directly relate to the proffered position:

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<sup>5</sup> See <https://www.onetonline.org/link/summary/41-4011.00>

<sup>6</sup> See <https://www.onetonline.org/link/summary/41-4011.00>.

<sup>7</sup> See <https://www.onetonline.org/link/summary/41-9031.00>.

1. Collaborate with sales teams to understand customer requirements, to promote the sale of company products, and to provide sales support;
2. Sell products requiring extensive technical expertise and support for installation and use, such as material handling equipment, numerical-control machinery, or computer systems;
3. Plan and modify product configurations to meet customer needs;
4. Confer with customers and engineers to assess equipment needs and to determine system requirements;
5. Prepare and deliver technical presentations that explain products or services to customers and prospective customers;
6. Arrange for demonstrations or trial installations of equipment;
7. Create sales or service contracts for products or services;
8. Develop, present, or respond to proposals for specific customer requirements, including request for proposal responses and industry-specific solutions;
9. Provide technical and non-technical support and services to clients or other staff members regarding the use, operation, and maintenance of equipment;
10. Recommend improved materials or machinery to customers, documenting how such changes will lower costs or increase production;
11. Develop sales plans to introduce products in new markets;
12. Provide information needed for the development of custom-made machinery;
13. Document account activities, generate reports, and keep records of business transactions with customers and suppliers;
14. Keep informed on industry news and trends, products, services, competitors, relevant information about legacy, existing, and emerging technologies, and the latest product-line developments;
15. Identify resale opportunities and support them to achieve sales plans; and
16. Secure and renew orders and arrange delivery.<sup>8</sup>

In addition to the differing general information provided above from O\*NET, we note that the Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, (*Handbook*) also provides different information for the two occupations in the "Education" section.<sup>9</sup> The *Handbook* provides the following regarding the education requirements for a sales representative, wholesale and manufacturing, technical and scientific products:

A high school diploma is typically sufficient for many positions, primarily those selling nontechnical or scientific products. However, representatives selling scientific and technical products usually must have a bachelor's degree. Scientific and technical products include pharmaceuticals, medical instruments, and industrial equipment. A

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<sup>8</sup> The following O\*NET tasks for sales engineers do not relate to the proffered duties: 1. Visit prospective buyers at commercial, industrial, or other establishments to show samples or catalogs, and to inform them about product pricing, availability, and advantages; 2. Research and identify potential customers for products or services; 3. Diagnose problems with installed equipment; 4. Maintain sales forecasting reports; and 5. Write technical documentation for products.

<sup>9</sup> See <https://www.bls.gov/ooh/sales/wholesale-and-manufacturing-sales-representatives.htm#tab-4> and <https://www.bls.gov/ooh/sales/sales-engineers.htm#tab-1>.

degree in a field related to the product sold, such as chemistry, biology, or engineering, is *sometimes* required.

Many sales representatives attend seminars in sales techniques or take courses in marketing, economics, communication, or even a foreign language to improve their ability to make sales.

(Emphasis added.) In other words, the *Handbook* does not state that a bachelor's degree *in a specific specialty* is normally the minimum requirement for entry into the particular position. The sales engineers' entry states:

Sales engineers typically need a bachelor's degree in engineering or a related field. However, a worker without a degree, but with previous sales experience as well as technical experience or training, may become a sales engineer. Workers who have a degree in a science, such as chemistry, or in business with little or no previous sales experience, also may become sales engineers.

University engineering programs generally require 4 years of study. They vary in content, but all programs include courses in math and the physical sciences. In addition, most programs require developing strong computer skills.

Most engineering programs require students to choose an area of specialization. The most common majors are electrical, mechanical, or civil engineering, but some engineering departments offer additional majors, such as chemical, biomedical, or computer hardware engineering. However, some undergraduate programs offer a general engineering curriculum; students then specialize in a particular area either on the job or in graduate school.

In light of the above, the Director should compare the job descriptions the Petitioner provided in its initial filing, in response to the request for evidence, and on appeal to the complete list of tasks provided for (1) sales representatives, wholesale and manufacturing, technical and scientific; and (2) sales engineers in O\*NET to determine whether the Petitioner selected the most appropriate SOC code.

The Director should then determine whether the record satisfies the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(I), which requires a petitioner to obtain certification from DOL that it has filed an LCA "in the occupational specialty in which the alien(s) will be employed" and if the petition is supported by an LCA that corresponds to the petition under 20 C.F.R. § 655.705(b).

If the Director concludes that the Petitioner has satisfied all of the above, she should then determine whether the position qualifies as a specialty occupation based upon the information in the record, including the April 2019 letter. Only if she concludes that the position qualifies as a specialty

occupation should the Director then determine whether the Beneficiary qualifies for the proffered position.<sup>10</sup>

## II. CONCLUSION

As the Petitioner was not previously accorded the opportunity to address the above, we will remand the record for further review of the issue. If the Director determines it is necessary, she may request any additional evidence considered pertinent to the new determination.

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

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<sup>10</sup> Specifically, the Director is required to follow long-standing legal standards and determine first, whether the proffered position qualifies for classification 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].").