



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

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

In Re: 9475101

Date: JUNE 9, 2020

Appeal of California Service Center Decision

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

The Petitioner, a consumer goods and retail company, seeks to temporarily employ the Beneficiary as a support associate 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 that the proffered position qualifies as a specialty occupation under any of the criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 the proffered position is not a specialty occupation under any of the criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A). However, the record of proceeding, as it relates to whether the certified Department of Labor (DOL) ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers (LCA), is accurate is not sufficiently developed for us to determine whether the proffered position is a specialty occupation.

The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). *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) (indicating that the wage protections in the Act seek “to protect U.S. workers’ wages and eliminate any economic incentive or advantage in hiring temporary foreign workers” and that this “process of protecting U.S. workers begins with [the filing of an LCA] with [DOL].”). According to section 212(n)(1)(A) of the Act, an employer must attest that it will pay a holder of an H-1B visa the higher of the prevailing wage in the “area of employment” or the amount paid to other employees with similar experience and qualifications who

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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).

are performing the same services. *See* 20 C.F.R. § 655.731(a); *Venkatraman v. REI Sys., Inc.*, 417 F.3d 418, 422 & n.3 (4th Cir. 2005); *Patel v. Boghra*, 369 F. App'x 722, 723 (7th Cir. 2010); *Michal Vojtisek-Lom & Adm'r Wage & Hour Div. v. Clean Air Tech. Int'l, Inc.*, No. 07-97, 2009 WL 2371236, at 8 (Dep't of Labor Admin. Rev. Bd. July 30, 2009).<sup>2</sup>

The Petitioner designated the SOC code 15-2031 on the LCA, corresponding to the occupational title "Operations Research Analysts." However, the Petitioner has not established, by a preponderance of the evidence, that the proffered position's duties actually correspond with those of positions located within SOC code 15-2031. According to the Occupational Information Network (O\*NET) job description, an Operations Research Analyst is primarily focused on using mathematical and quantitative modeling to inform and drive business operations. The Petitioner included duties that appear atypical to the SOC code on the LCA and which, on the whole, do not encompass the duties of an Operations Research Analyst.

The DOL's guidance explains that a job's SOC code is identified by selecting the O\*NET job description "that most closely matches the employer's request" from a list of similar occupations.<sup>3</sup> Here, it appears as though the proffered position's duties could properly be classified under several other occupational categories that more closely align with the position's duties, including Computer Systems Engineers/Architects (within SOC code 15-1199.02), Database Architects (within SOC code 15-1199.06), or Sales Engineers (within SOC code 41-9031), among others. These occupations more closely align with the Petitioner's description of the proffered position, which focuses on scaling Petitioner's cloud-based product(s) to meet customer needs and development of software tools and knowledge-content customer articles, technical videos and custom scripts to support and enhance customer services.

Thus, the record, on the whole, indicates the Petitioner likely chose the incorrect SOC code on the LCA.

The Petitioner's apparent selection of an incorrect SOC code on the LCA necessarily precludes evaluation of whether the proffered position meets the definition of a specialty occupation because USCIS evaluates the statutory and regulatory definitions of a specialty occupation within the context of the broader occupation. Reliance on the incorrect occupational code on the LCA could result in an erroneous outcome, or one that does not properly assess the actual nature of the occupation in which the Beneficiary would engage. Thus, it would not be a valuable use of USCIS resources to analyze the position requirements under an incorrect SOC code.

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<sup>2</sup> While DOL certifies the LCA, U.S. Citizenship and Immigration Services (USCIS) determines whether the LCA's attestations and content corresponds with and supports 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 . . ."). *See also Matter of Simeio Solutions*, 26 I&N Dec. 542, 546 n.6 (AAO 2015). When comparing the standard occupation classification (SOC) code or the wage level indicated on the LCA to the claims associated with the petition, USCIS does not purport to supplant DOL's responsibility with respect to wage determinations. There may be some overlap in considerations, but USCIS' responsibility at its stage of adjudication is to ensure that the content of the DOL-certified LCA "corresponds with" the content of the H-1B petition.

<sup>3</sup> DOL, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009) (DOL guidance), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

A subordinate concern relates to the education requirements we consider under the regulatory criteria and how these may differ markedly from one occupational classification to the next. Under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), degree requirements to enter an occupation are not the same for all positions in a particular field of endeavor. For example, the degree requirements for positions located in the Sales Engineers occupation (usually a bachelor's degree in engineering) would generally be different from those of Computer Systems Analyst (an associate's degree in a related field is a common requirement).<sup>4</sup> Likewise, when considering 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a degree requirement considered common to the industry for one occupation may also be distinct in comparison to others.<sup>5</sup>

## II. CONCLUSION

We therefore are withdrawing the Director's decision and remanding the matter for further review of the record and issuance of a new decision. Specifically, the Director should first make a determination on whether the LCA was certified for the appropriate occupational category, and therefore corresponds to and supports this H-1B petition. If the Director determines it is necessary, she may request any additional evidence considered pertinent to the new determination. As such, 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.

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<sup>4</sup> See the relevant entry for each occupational title found at <https://www.bls.gov/ooh/>.

<sup>5</sup> See the relevant entry for each occupational title found at <https://www.onetonline.org/>.