



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

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

In Re: 9504391

Date: JUNE 30, 2020

Appeal of California Service Center Decision

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

The Petitioner, a geographic software development firm, seeks to employ the Beneficiary temporarily as a “software application developer” under the H-1B nonimmigrant classification for specialty occupations.¹ 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 California Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish the Beneficiary was qualified to perform the duties of the offered position. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.² We review the questions in this matter *de novo*.³ We conduct *de novo* review on appeal, but a threshold matter must be resolved before we may address the merits of the Director’s decision and the Petitioner’s appeal. Specifically, a beneficiary’s credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. We are 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.⁴

In particular, the Director should evaluate two specialty occupation-related issues. First, whether the Petitioner’s degree requirements were sufficiently specific. We note the Petitioner initially stated it required a “Bachelor’s Degree in Science or other technical field.” This would appear to require a bachelor’s degree within a natural science discipline such as geology, physics, biology, chemistry, astronomy, etc. Then, in response to the Director’s request for evidence the Petitioner noted “[w]e

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

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

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

⁴ 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].”).

have stated the minimum requirement for the position as a ‘Bachelor’s Degree in Science’ as we have concluded that we need a unique combination of degrees or courses for our position. The ideal candidate for our company is professional with a combination of a geography and computer science degree.” The Director should first decide whether the Petitioner’s indication of what degree an “ideal candidate” would have equated to the position’s mandatory educational requirements, or that was simply their preference. Further, the Director should consider whether the Petitioner’s stated degree requirements were sufficient to demonstrate that it required a bachelor’s degree in a specific specialty (or an equivalent) in accordance with the statute and the regulation.

If the Director finds in the Petitioner’s favor on that issue (that the degree requirements were sufficient under the H-1B program), she may wish to consider what impact those position requirements might have on the wage level that would be required on the labor condition application. We note that the geography knowledge and skills requirement would appear to necessitate an increase in the prevailing wage level by one increment under step four of the DOL guidance as a special skill or skills beyond those of an entry-level worker under the Software Developers, Applications occupational title within the Occupational Information Network.

Accordingly, the matter will be remanded to the Director to consider the specialty occupation and the labor condition application issue and enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. 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.