



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

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

In Re: 9230539

Date: JULY 6, 2020

Appeal of California Service Center Decision

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

The Petitioner, a software development and project management company, seeks to temporarily employ the Beneficiary as a “computer networks architect” 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 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 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . .” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires “theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(1) of the Act, but adds a non-exhaustive list of fields of endeavor. In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the proffered position must meet one of four criteria to qualify as a specialty occupation position.<sup>1</sup> Lastly,

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<sup>1</sup> 8 C.F.R. § 214.2(h)(4)(iii)(A) must be read with the statutory and regulatory definitions of a specialty occupation under

8 C.F.R. § 214.2(h)(4)(i)(A)(1) states that an H-1B classification may be granted to a foreign national who “*will perform services in a specialty occupation . . .*” (emphasis added).

Accordingly, to determine whether the Beneficiary will be employed in a specialty occupation, we look to the record to ascertain the services the Beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor’s degree or higher in a specific specialty or its equivalent. Without sufficient evidence regarding the duties the Beneficiary will perform, we are unable to determine whether the Beneficiary will be employed in an occupation that meets the statutory and regulatory definitions of a specialty occupation and a position that also satisfies at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The services the Beneficiary will perform in the position determine: (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (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 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. 8 C.F.R. § 214.2(h)(4)(iii)(A).

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act. 8 C.F.R. § 214.2(h)(4)(i)(B)(2). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

## II. ANALYSIS

Upon review of the record in its totality, we conclude that the Petitioner has not sufficiently established the services in a specialty occupation that the Beneficiary would perform during the requested period of employment, which precludes a determination of whether the proffered position qualifies as a specialty occupation under sections 101(a)(15)(H)(i)(b), 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(i)(A)(1), 8 C.F.R. § 214.2(h)(4)(ii) and (iii)(A).<sup>2</sup>

A crucial aspect of this matter is whether the duties of the proffered position are described in such a way that we may discern the actual, substantive nature of the position. When determining whether a position is a specialty occupation, we look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the performance of those duties within the context of that particular employer’s business operations.

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section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). 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”).

<sup>2</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. Although we may not discuss every document submitted, we have reviewed and considered each one.

On a fundamental level, we conclude that the Petitioner has not sufficiently delineated the substantive nature of the Beneficiary's proposed duties within its operations. According to the Petitioner, the Beneficiary will be employed for in-house projects as a "computer networks architect."<sup>3</sup> On appeal, the Petitioner "reiterates that the Beneficiary will be working internally as a Computer Network Architect, this is alike an internal accounting or marketing position" and that the Petitioner "still requires personnel who will work internally for them, so that internal work is completed, so that there is no impact to the operation of the Petitioner's business."

The Petitioner initially summarized the nature of its operations as a "leading provider of software solutions" and stated that it "offers a variety of services including product development, software solutions and IT services." The Petitioner further stated that it has "started designing and developing [their] very own products" and listed three software solutions services:

1. Application Development: This includes web[-]based, client/server application development, migration of legacy applications, ERP application customizations.
2. Migration and Customization: This includes version upgrade services, database migration, re-engineering, functionality upgrades and porting.
3. Maintenance and Support: Web applications and websites require maintenance and support as business needs change and grow. [The Petitioner] provides cost-effective application support and website maintenance services, avoiding additional expenses to companies in having to hire in-house support staff. (Emphasis omitted.).

In the RFE, the Director requested an explanation of how the Beneficiary's specific job duties relate to the Petitioner's products and services. In response to the RFE, the Petitioner revised the Beneficiary's duties and submitted photographs depicting its workspaces and computer hardware. On appeal, the Petitioner states that "[t]he reason why the photographs of the servers were included was for the purpose of showing how the Beneficiary's work as a Computer Network Architect at the Petitioner's office would require the use of the servers." However, these photographs do not sufficiently identify a specific project, demonstrate the stage of the project, and the remaining work, if any, to be performed to complete the project. The Petitioner listed "project management" amongst the Beneficiary's duties and stated that he will support "over 350 users of various SAS technologies." However, the Petitioner did not provide sufficient details of the projects and did not explain whether the Beneficiary's network support responsibilities will include individuals other than its own employees, and if so, who the other 125 users are.<sup>4</sup> The photographs, without more, do not sufficiently establish the scope and nature of the Beneficiary's proposed position.

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<sup>3</sup> The Petitioner submitted a certified labor condition application (LCA) for the occupational category "Computer Network Architects" corresponding to Standard Occupational Classification (SOC) code 15-1143, with a Level II wage. 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). A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009); [http://flcdatcenter.com/download/NPWHCGuidance\\_Revised\\_11\\_2009.pdf](http://flcdatcenter.com/download/NPWHCGuidance_Revised_11_2009.pdf).

<sup>4</sup> On the petition, the Petitioner stated that it employs 225 employees.

Furthermore, the record does not contain a sufficiently detailed description of the Beneficiary's duties to establish that the position requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent. For example, the Petitioner states that the Beneficiary will be responsible for upgrading existing network components without stating what networking systems currently in use in its business operations and what components need upgrading. Generally described duties do not illuminate the substantive application of knowledge involved or any particular educational requirement associated with such duties. Notably, the Petitioner does not describe the proffered duties in relation to a specific project despite stating that the project management is one of the Beneficiary's duties. Such a generalized description does not establish a necessary correlation between the proffered position and a need for a particular level of education, or its equivalency, in a body of highly specialized knowledge in a specific specialty.

The Petitioner also states that the Beneficiary will "[m]onitor communications systems – wireless, mobile applications and telecommunications systems on constant intervals." The Petitioner did not explain what exactly the Beneficiary will be doing to "monitor communications systems" and did not establish how these duties require an individual with a bachelor's or higher degree in a specific specialty, or its equivalent. While the position may require that the Beneficiary possess some skills and technical knowledge in order to perform these duties, the Petitioner has not sufficiently explained how these tasks require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation.

With the broadly described duties, and the lack of evidence regarding work specific to a particular project, the record lacks sufficient information to understand the nature of the actual proffered position and to determine that the duties require the theoretical and practical application of a body of highly specialized knowledge attained by a bachelor's degree, or higher, in a specific discipline.

The Petitioner asserted that the position requires someone with "a Bachelor's Degree in Computer Science, Computer Applications, CIS, Information Technology, Electrical or Electronics Engineering or a related field of study." The Petitioner claims that the Beneficiary is well qualified for the position and references his qualifications. However, the test to establish a position as a specialty occupation is not the credentials of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. Here, the Petitioner has not established the substantive nature of the Beneficiary's work.

The Petitioner submitted an opinion letter authored by [REDACTED] a professor at [REDACTED] University. In his letter, the professor (1) described the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) described aspects of the previously discussed job duties proposed for the Beneficiary; and (3) stated that these duties require at least a bachelor's degree in computer science, computer information systems, electronics engineering or another closely related field. We carefully evaluated the professor's assertions in support of the instant petition but find them insufficient.

The professor stated that he reviewed the Petitioner's "support letter regarding [its] business and operations, and labor condition application information including the beneficiary's qualifications." He

also stated that he reviewed “[a]dditional resources, including a review of company website . . . to further understand [the Petitioner’s] business model, as well as the details of the proffered position.” He quoted the duties provided in the Petitioner’s RFE response but did not provide sufficient analysis of the requirements of the proffered position within the context of the Petitioner’s on-going projects. The professor identified “requirement gathering and analysis,” “coding and unit/integrated testing,” “installation and configuration testing,” and “reporting” as “core duties” of the proffered position. The professor stated that “[b]ecause most if not all of the position’s duties are within the scope of the topics taught in a University level Bachelor degree, or the equivalent . . . the position must be considered sufficiently specialized and complex . . . .” However, the professor’s analysis falls short of providing a meaningful discussion of what the Beneficiary will actually do in the proffered position and how those duties require the theoretical and practical application of a body of highly specialized knowledge. While we appreciate the professor’s discussion of the proffered position, his conclusory statements do not sufficiently articulate how he was able to adequately assess the nature of the position and appropriately determine the educational requirements of the position based upon the general duties provided by the Petitioner.

The professor also quoted the general duties listed in the Department of Labor’s Occupational Information Network (O\*NET) summary report for the “Computer Network Architects” occupational category and concluded that the “duties associated with industry standard position are within the scope of the specialized topics covered in a standard academic program in Bachelor degree, or the equivalent, in a field such as Computer Science, Computer Information Systems, Electronics Engineering or another loosely related field.”<sup>5</sup> The professor, however, did not acknowledge that the O\*NET also stated, “[m]ost of these occupations require a four-year bachelor’s degree, but some do not.”<sup>6</sup> He did not provide a meaningful discussion and analysis of the position to appropriately determine the educational requirements of the position. The professor’s conclusory statements are insufficient to demonstrate that proffered position qualifies as a specialty occupation. Furthermore, while the professor asserted that he has “grown familiar with the role played by Network IT Architect specialists,” there is no indication that he has conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) and no indication of recognition by professional organizations that he is an authority on *those* specific requirements.

In summary, we conclude that the Petitioner has not demonstrated through the professor’s letter how an established curriculum of courses leading to a baccalaureate or higher degree in a specific specialty,

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<sup>5</sup> The O\*NET can be accessed at <http://www.onetonline.org>.

<sup>6</sup> The O\*NET Summary Report provides general information regarding the occupation, but it does not support a conclusion that the proffered position requires a bachelor’s degree in a specific specialty, or the equivalent. Instead, O\*NET assigns these positions a “Job Zone Four” rating, which states “most of these occupations require a four-year bachelor’s degree, but some do not.” Moreover, the Job Zone Four designation does not indicate that any academic credentials for Job Zone Four occupations must be directly related to the duties performed. In addition, the specialized vocational preparation (SVP) rating designates this occupation as 7 < 8. An SVP rating of 7 to less than (“<”) 8 indicates that the occupation requires “over 2 years up to and including 4 years” of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, experience, and formal education. The SVP rating also does not specify the particular type of degree, if any, that a position would require. (For additional information, see the O\*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.) For all of these reasons, O\*NET does not establish the proffered position as a specialty occupation. See <https://www.onetonline.org/link/summary/15-1143.00> (last visited July 2, 2020).

or its equivalent, is required to successfully serve in the proffered position. For the reasons discussed, we find that the professor's opinion letter lends little probative value to the matter here. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is "not in accord with other information or is in any way questionable."). For the sake of brevity, we will not address other deficiencies within his analysis of the proffered position.

The Petitioner has not established the substantive nature of the Beneficiary's work. Consequently, this precludes a conclusion 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 entry into the particular position, which is the focus of criterion 1; (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 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.<sup>7</sup>

The Petitioner has not established that the proffered position is a specialty occupation.

**ORDER:** The appeal is dismissed.

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<sup>7</sup> As the lack of probative evidence in the record precludes a conclusion that the proffered position is a specialty occupation and is dispositive of the appeal, we will not further discuss the Petitioner's assertions on appeal regarding the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).