



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

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

In Re: 9316514

Date: SEP. 30, 2020

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker

The Petitioner, an information technology consulting company, seeks to temporarily employ the Beneficiary as a “master sections analyst” 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)(I) of the Act, 8 U.S.C. § 1184(i)(I), 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, 387-88 (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 Colorado, 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 directly to the end-client. The Petitioner submitted a document, equivalent to a statement of work, that identifies the project it claims the Beneficiary would be assigned to in the proffered position. However, the document did not provide information pertaining to the duties or the educational requirements for entry to the proffered position.

The Petitioner provided its own list of job duties for the proffered position and indicated that the minimum entry requirement is a bachelor’s degree, or equivalent, in mechanical engineering or a related field in engineering.

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 describe the proffered position in sufficient

detail to establish the substantive nature of the position, which precludes a determination that the proffered position qualifies as a specialty occupation under at least one of the four regulatory specialty-occupation criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).¹

We determine that the evidence is insufficient to establish that the proffered position qualifies for classification as a specialty occupation. 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. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the Petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. See *id.*

Here, the record of proceedings does not provide sufficient information from the end-client regarding the project assignment or the specific job duties to be performed by the Beneficiary. The Petitioner submitted a Statement of Work (SOW) from the end-client that identifies the project for “master sections” and briefly describes the expected deliverables. However, the SOW does not specifically identify the Beneficiary as assigned to this project and does not outline the expected duties or education requirements for the proffered position. Nor has the Petitioner submitted any other documentation from the end-client outlining this information. Thus, the Petitioner has not provided sufficient evidence from the end-client to establish that the proffered position qualifies as a specialty occupation.

At the time of filing, the Petitioner described 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 Petitioner stated that the Beneficiary would perform duties such as, work with CAD designers to update [redacted] and [redacted] sections to include measurement requirements in addition to design requirements, monitor progress of engineer’s review/sign off of parts and data for [redacted] and [redacted] [redacted] events, and evaluate [redacted] and [redacted] specifications and record measurements in [redacted] system (online [redacted] database), without providing any additional explanation regarding the level of participation.² However, this list of duties provided by the Petitioner does not actually contain a detailed description explaining what particular tasks the Beneficiary will perform for the end-client or its project. While the Petitioner provided a vague description of the position, it did not provide a detailed explanation regarding the demands, level of responsibilities, or complexity of these duties. The Petitioner described the position in terms of generic functions that do not convey sufficient substantive information to establish the relative complexity, uniqueness, and/or specialization of the proffered position or its duties. The Petitioner’s statements do not 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 for the end-client. The

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.

² While the Petitioner provided several job duties for the proffered position, we will not list each one. We note that this is not an exhaustive list of all vague and generalized duties for which the Petitioner has not provided additional information or explained the requirement for the theoretical and practical application of a body of highly specialized knowledge. The Petitioner should not assume that any duties not listed here are otherwise persuasive.

statements also do 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.

The expert opinion letter authored by [REDACTED], Associate Professor in the Department of Mechanical and Energy Engineering [REDACTED] Program and Director of Advanced Composite Structures Engineering Laboratory at [REDACTED] University does not satisfy the Petitioner's burden, either. In his letter, [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) lists the duties proposed for the Beneficiary; and (3) states that these duties require at least a bachelor's degree, or its equivalent, in mechanical engineering or a related field. We carefully evaluated [REDACTED]'s assertions in support of the instant petition but find them insufficient.

In his letter, [REDACTED] listed the same duties for the proffered position as those provided by the Petitioner. While we appreciate his brief discussion of the generic duties provided by the Petitioner, [REDACTED]'s letter still falls short of providing a meaningful discussion of what the Beneficiary would actually do in the proffered position and how those duties actually require the theoretical and practical application of a body of highly specialized knowledge. For example, in his discussion, [REDACTED] restated several of the listed duties but did not provide any analysis of their complexity or how those duties are so specialized and complex as to require a bachelor's degree in a specific specialty. Instead, [REDACTED]'s analysis focused on the knowledge required to perform duties within the mechanical engineering field. Further, the record does not indicate whether [REDACTED] was aware that, as indicated by the Level I wage on the LCA, the Petitioner considered the proffered position to be for an employee who is expected to have a basic understanding of the occupation that requires limited, if any, exercise of judgment, close supervision, close monitoring of work for accuracy, and specific instructions on required tasks and expected results. [REDACTED] concluded that "the position is sufficiently complicated so as to require a bachelor's degree in mechanical engineering, or a related field. . . . because its job duties are so complex, and at the same time so unique to the mechanical engineering domain" [REDACTED] further stated that "any individual lacking a bachelor's degree (or its equivalent) in these fields would not be able to perform these duties to the degree [the Petitioner] requires for the continuous execution of its business operations." However, again, while he listed the duties provided by the Petitioner in his letter, [REDACTED] did not discuss the specifics of the particular tasks upon which the Beneficiary would work in meaningful detail. As such, we conclude that the Petitioner has not demonstrated that [REDACTED] adequately assessed the nature of the position and appropriately determined parallel positions based upon the job duties and level of responsibilities.

For the reasons discussed, we've determined that [REDACTED]'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.").

Here, neither the Petitioner's statements nor the SOW provides 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 for the end-client. 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 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 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.