



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

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

In Re: 8826139

Date: JUNE 17, 2020

Appeal of California Service Center Decision

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

The Petitioner, an internet web development platform, seeks to temporarily employ the Beneficiary as a software engineering manager, 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 does not establish that the Beneficiary is qualified for the proffered position. On appeal, the Petitioner asserts that the Director erred in the decision.

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. 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].").

As presently constituted, the record does not demonstrate that the proffered position qualifies as a specialty occupation. *See* 8 C.F.R. § 214.2(h)(4)(iii)(A). We note the Petitioner explained the Beneficiary's duties as follows:

- Develop engineers on his team, facilitating their growth professionally;
- Regularly have one-on-ones, conduct reviews, and facilitate peer reviews;
- Handle personal and interpersonal issues involving his direct reports;
- Respond to on-call requests in a timely manner to resolve issues in real time;
- Understand industry best practices in engineering and ecommerce; and
- Work directly with product, finance, analytics, and other department stakeholders.

This job description is not sufficient evidence to explain the duties and responsibilities of the Beneficiary. The Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation because the record lacks sufficient evidence of the actual work that the Beneficiary will perform.

Accordingly, the matter will be remanded to the Director to consider the specialty occupation 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.