



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

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

In Re: 8961386

Date: JUNE 17, 2020

Appeal of California Service Center Decision

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

The Petitioner, a software consulting company, seeks to temporarily employ the Beneficiary as a “senior data scientist” 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 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. We will withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the analysis below.

I. ANALYSIS

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Computer and Information Research Scientists,” corresponding to the Standard Occupational Classification code 15-1111.² Throughout the proceedings, the Petitioner has maintained that the proffered position of “senior data scientist” requires a minimum of a bachelor’s degree in computer science or information technology. For the reasons below, we conclude that the Petitioner has not sufficiently established the essential nature of the proffered position.

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

² A petitioner submits the LCA to 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).

According to the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* regarding the educational requirements of this occupational category, "[m]ost jobs for computer and information research scientists require a master's degree in computer science or a related field."³ Additionally, the DOL's Occupational Information Network (O*NET) summary report⁴ for "Computer and Information Research Scientists" (SOC code 15-1111.00) assigns these positions a "Job Zone Five" rating, which states that "[m]ost of these occupations require graduate school. For example, they may require a master's degree [or higher]."⁵

In response to the Director's request for evidence (RFE), the Petitioner submitted a position evaluation letter from [redacted] a professor in the Computer Science Department of [redacted] University. This letter states that the proffered position requires a bachelor's degree in computer science or data science, which slightly differs from the qualifying fields articulated by the Petitioner. Moreover, [redacted] states that the duties of the proffered position are typical of the Computer and Information Research Scientist occupational category and "clearly correspond to the duties listed under the category" in the *Handbook*. Upon reviewing the duties of the occupational category in O*NET [redacted] also states that the proffered position "shares many of the same duties and falls under this occupational category."

Considering the totality of the evidence, it does not appear as though the Petitioner has considered the educational requirements of the occupational category when it selected SOC code 15-1111 on the LCA. While the *Handbook* and O*NET do not categorically state that all positions within this category require a master's degree, the Petitioner has not sufficiently explained how its position differs from the requirements of most positions within the category. Specifically, if the proffered position is clearly within the Computer and Information Research Scientist occupational category and most occupations falling within this category require a master's degree, then this leads to significant questions about the essential nature of the proffered position. As noted, the Petitioner stated that its position requires only a bachelor's degree. Specifically, it should be determined: (1) if the proffered position differs from other positions within the occupational category, how does it differ and has the Petitioner selected the correct occupational category; or (2) if the proffered position does not differ from others within the occupational category, why does the proffered position require a bachelor's degree and not a master's degree.

The Petitioner has not reconciled the nature of its position when compared to the duties and educational qualifications listed for the occupational category it selected. Because the record reflects that the Director's original decision letter did not include a discussion of the substantive nature of the proffered position, we remand the case to the Director to make a determination in this regard.

³ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, "Computer and Information Research Scientists," <https://www.bls.gov/ooh/computer-and-information-technology/computer-and-information-research-scientists.htm#tab-4> (last visited Jun. 17, 2020).

⁴ On appeal, the Petitioner submitted printouts of this summary report for our consideration.

⁵ See the O*NET summary report for "Computer and Information Research Scientists," available at <https://www.onetonline.org/link/summary/15-1111.00> (last visited Jun. 17, 2020).

II. CONCLUSION

It is the Petitioner's burden to establish the substantive nature of the proffered position and to select the most appropriate occupational category for its position.⁶ In making a determination as to whether the Petitioner has met its burden, the Director may request any additional evidence considered pertinent to this issue, as well as to any other issue, such as the qualifications of the Beneficiary. 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.

⁶ Section 291 of the Act, 8 U.S.C. § 1361.