



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

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

In Re: 9050116

Date: JULY 23, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, an advertising and communications organization, seeks to employ the Beneficiary temporarily as an “associate director” under the H-1B nonimmigrant classification for specialty occupations.<sup>1</sup> 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 Vermont Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish that the proffered position qualified 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.<sup>2</sup> We review the questions in this matter *de novo*.<sup>3</sup>

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case because the Director’s decision appears insufficient for review. As noted, the Director concluded that the proffered position is not a specialty occupation. However, the record of proceeding is not sufficiently developed to allow us to determine whether the proffered position is actually located within the occupational category for which the Department of Labor (DOL) ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers (LCA) was certified.<sup>4, 5</sup>

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

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

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

<sup>4</sup> While Department of Labor (DOL) certifies the LCA, U.S. Citizenship and Immigration Services (USCIS) determines whether the LCA’s attestations and content corresponds with and supports the H-1B petition. See 20 C.F.R. § 655.705(b) (“DHS determines whether the petition is supported by an LCA which corresponds with the petition . . .”). See also *Matter of Simeio Solutions*, 26 I&N Dec. 542, 546 n.6 (AAO 2015). When comparing the standard occupation classification (SOC) code or the wage level indicated on the LCA to the claims associated with the petition, USCIS does not purport to supplant DOL’s responsibility with respect to wage determinations. There may be some overlap in considerations, but USCIS’ responsibility at its stage of adjudication is to ensure that the content of the DOL-certified LCA “corresponds with” the content of the H-1B petition.

<sup>5</sup> Before filing a petition for H-1B classification, the regulation requires petitioners to obtain certification from DOL that the organization has filed an LCA in the occupational specialty in which its foreign national personnel will be employed.

Without knowing the answer to that question, we cannot determine the actual, substantive nature of the position. This means that we cannot make a determination on the specialty-occupation question based on the current record. We therefore are withdrawing the Director's decision and remanding the matter for further review of the record and issuance of a new decision. Specifically, the Director should first determine whether (1) the Petitioner obtained a certification from DOL that it filed an LCA in the occupational specialty in which the Beneficiary would be employed; and (2) the LCA was certified for the appropriate occupational category, and therefore corresponds to and supports this H-1B petition.<sup>6</sup>

After reviewing the initial set of duties the Petitioner provided, we question whether it has demonstrated the substantive nature of the proffered position for multiple reasons. The Director may wish to evaluate those factors to make a determination on this matter. First, the majority of the initially provided duties appear to relate to television advertising strategies and are atypical to the Economists occupational classification the Petitioner designated on the LCA.

Second, the majority of the duties the Petitioner initially offered were copied from other resources. Of those 12 duties, 6 were copied from a job advertisement and resume building website, which existed before the Petitioner filed the petition.<sup>7</sup> We further note that the Petitioner provided four duties that are identical to those found within the Occupational Information Network (O\*NET) entry for the Economists occupational classification. Those four duties appear to be the only ones associated with the Economists occupation.

We further question whether the position prerequisites the Petitioner stated in the record reflect its actual position requirements. Some announcements on the job advertisement and resume building website we mentioned above have expired. Notably, we observe that website contains an expired job advertisement bearing the same job title and virtually identical duties to the ones presented within this petition's initial filing.<sup>8</sup> The organization associated with that job advertisement is listed as [REDACTED]. According to the Petitioner's own website, [REDACTED] appears to be one of this petitioner's dedicated divisions.<sup>9</sup> While that relationship is not an adverse aspect, we note that for this job advertisement, [REDACTED] required a bachelor's degree in addition to "7+ years of media

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<sup>8</sup> 8 C.F.R. § 214.2(h)(4)(i)(B)(I).

<sup>6</sup> See 8 C.F.R. § 214.2(h)(4)(i)(B)(I); *Simeio Solutions*, 26 I&N Dec. at 546 n.6; 20 C.F.R. § 655.705(b).

<sup>7</sup> As it relates to resume website, utilizing the following search [https://www.google.com/search?q=%22provide+proactive+communication+with+client+regarding+media+recommendations%22&source=Int&tbs=cdr%3A1%2Ccd\\_min%3A1%2F1%2F2000%2Ccd\\_max%3A3%2F1%2F2019&tbm=results](https://www.google.com/search?q=%22provide+proactive+communication+with+client+regarding+media+recommendations%22&source=Int&tbs=cdr%3A1%2Ccd_min%3A1%2F1%2F2000%2Ccd_max%3A3%2F1%2F2019&tbm=results) in the following content as it existed under resume number 62 titled Associate Media Director on Jan. 25, 2018, <https://www.velvetjobs.com/resume/media-director-resume-sample>. Additionally using the following search [https://www.google.com/search?q=%22fortify+relationships+with+clients%2C+Media+Partners+and+internal+departments%22&source=Int&tbs=cdr%3A1%2Ccd\\_min%3A1%2F1%2F2000%2Ccd\\_max%3A3%2F1%2F2019&tbm=results](https://www.google.com/search?q=%22fortify+relationships+with+clients%2C+Media+Partners+and+internal+departments%22&source=Int&tbs=cdr%3A1%2Ccd_min%3A1%2F1%2F2000%2Ccd_max%3A3%2F1%2F2019&tbm=results) in the following content under resume number 71 titled Manager, Connected Television as it existed on Jan. 5, 2018, <https://www.velvetjobs.com/resume/television-resume-sample>.

<sup>8</sup> An exception is the website job advertisement contains one duty the Petitioner did not include in the initial filing. See the first job advertisement at the following URL: [REDACTED]

<sup>9</sup> [REDACTED]

experience.” However, the Petitioner did not express any experiential prerequisites for the position in this petition.

Initially, we question why these nearly identical positions within the Petitioner’s organizational structure would contain such divergent prerequisites. Moreover, if these are in fact the same positions, we question why the Petitioner designated the position in the petition at a Level II wage rate when a requirement of a bachelor’s degree and more than seven years of experience would likely mandate a Level IV wage rate designation. The Director may also wish to have the petitioning organization address these issues.

Accordingly, the matter will be remanded to the Director to consider the LCA 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.