



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

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

In Re: 8494023

Date: JUNE 17, 2020

Appeal of California Service Center Decision

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

The Petitioner, a software and development consulting company, seeks to temporarily employ the Beneficiary as a “UI developer” 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 did not establish (1) that the proffered position qualifies as a specialty occupation and (2) that the Beneficiary would perform the services of a specialty occupation for the requested employment period. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.² We review the questions in this matter *de novo*.³ Upon *de novo* review, we will dismiss the appeal.

I. BACKGROUND

The Petitioner, located in Georgia, seeks to deploy the Beneficiary to an end-client location in Missouri, pursuant to a series of contractual relationships between the Petitioner and [redacted] (first-vendor), between the first-vendor and [redacted] (second-vendor) and between the second-vendor and [redacted] (end-client, doing business as [redacted]). The contractual path of succession between the actors in this case therefore appears to flow as follows: Petitioner → First-Vendor → Second-Vendor → End-Client.

Upon review of the record in its totality and for the reasons set out below, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.⁴

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

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

⁴ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position

Specifically, we conclude that the Petitioner has not established the substantive nature of the work that the Beneficiary will perform due to material inconsistencies contained within the record of proceeding and a lack of specificity in the duties to be performed. As the proffered position is not a specialty occupation, the issue of whether it would exist through the duration of the the period of requested approval is not relevant and we decline to address it.

II. SPECIALTY OCCUPATION

A. 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 offered 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.⁵

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

and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

⁵ 8 C.F.R. § 214.2(h)(4)(iii)(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 (5th Cir. 2000).

B. Substantive Nature Analysis

As stated, upon review of the record, we conclude that the Petitioner has not established the substantive nature of the work that the Beneficiary will perform due to material inconsistencies contained within the record and a lack of specificity in the duties to be performed. The failure to establish the substantive nature of the work to be performed by the Beneficiary precludes us from determining whether the proffered position satisfies any of the regulatory specialty-occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4).

1. Material Inconsistencies

The Petitioner states that the Beneficiary will work as a “UI Developer.” However, the Petitioner also refers to the Beneficiary’s role as a “Java Developer,” while various contractual documents refer to the Beneficiary’s role as a “Software Engineer - UI” and “Software Developer III.” We do not know whether these different titles designate the same or different positions and whether these positions have the same or similar duties as the proffered position.⁶ Further, we do not know whether these varying titles indicate that the proffered position will change over the requested employment period. At a minimum, the title variations call into question the accuracy of the supporting documents and prevents us from accurately assessing the position.

In addition to variations in the position title, we also observe variations in the minimum qualifications for the position. In its initial filing, the Petitioner stated that the proffered position requires at least a bachelor’s degree in computer science or a closely related field “with substantial training and / or experience in designing and implementing computer based models and solutions to practical and technical problems. . .” The Petitioner has not provided adequate information or documentation as to how it determines what experience qualifies or how these qualifications might be met. In subsequent iterations, the Petitioner stated that the minimum qualifications included at least a bachelor’s degree in computer science with no reference to the additional experience. On appeal, the Petitioner provided documentation from various parties in the contractual chain, some of which state that the end-client requires the Beneficiary to have a “Bachelors in Information Sciences, PMP or equivalent experience.”⁷ The Petitioner has not provided documentation to show how its degree and experience requirements relate to the end-client’s requirements, nor has it explained why the requirements differ.

⁶ The Petitioner also submitted copies of education credentials and paystubs for individuals who it contends hold the same position of “software developer.” The Petitioner claims that these individuals perform job duties of a similar nature to those of the proffered position. According to the Petitioner’s organizational chart, these individuals occupy the positions of “software developer/Java” and “java developer.” If these positions are in fact similar to or the same as the proffered position, this suggests that the Petitioner does not differentiate between various types of software developers, which further obfuscates the nature of this specific proffered position.

⁷ This information comes from statements of work executed between the end-client and the second-vendor. The Petitioner states that the end-client will not provide an employment verification letter.

As recognized by the court in *Defensor*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical.⁸ 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.⁹ 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. As currently articulated, it is unclear what the minimum qualifications are for entry into the proffered position as the end-client and the Petitioner have articulated different qualifications.

In addition to these inconsistencies, several times throughout the documentation in the record, parties refer to the Beneficiary using a gender pronoun that does not coincide with the gender claimed on the Form I-129. While an occasional error in this regard may not signify much, multiple errors in this regard diminish the value of the documentation and suggest that these documents may have been prepared for a different Beneficiary. Furthermore, when combined with the Petitioner's reference to contracts executed with "IT Resources, Inc," an entity that does not appear to be a part of the contractual chain, further questions arise as to the validity and accuracy of the documents.

Taken together, these inconsistencies undermine the overall credibility of the petition and prevent us from discerning the substantive nature of the position. As previously explained, if we cannot determine the substantive nature of the position, then we cannot determine whether it qualifies as a specialty occupation.

2. Position Duties

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. We conclude that the descriptions of the position duties do not allow us to understand what role the Beneficiary will have at the end-client location and what the Beneficiary's day-to-day work involves.

For example, the Petitioner's job description contains duties such as "[w]ork on advanced techniques for single page business solutions and front-end MVC patterns," "[w]ork on managing the project using CLI to create Services and Components by using @Output, @Input, and Event Emitter," and "[w]ork with Bootstrap Grid system to ensure components alignment on webpage." The Petitioner provides little detail on what level of involvement "work on" means and we have no information on the "advanced techniques" the Beneficiary will use. Because the Petitioner has not clearly defined what the Beneficiary's activities will be, we have little insight into how this work involves or requires specialized knowledge. Though the Petitioner states that the duties are complex and unique, the Petitioner does not sufficiently substantiate its claims by adequately describing the duties.¹⁰

To further illustrate, it is not apparent what the Beneficiary will do when being "[r]esponsible for creating the artifacts and publishing it on to artifactory for [end-client project]" or when "spinning up

⁸ *Defensor*, 201 F.3d at 387-88.

⁹ *Id.*

¹⁰ We note the project descriptions and the computer coding samples, however these documents do not sufficiently explain the role of the Beneficiary on the projects or why the work she would perform is specialized.

the container each time the new image is created and deploy it on to the server.” These descriptions do not allow us to understand what activities the Beneficiary would actually engage in as she carries out undefined tasks.

As this non-exhaustive sampling of job duties demonstrates, it is not self-evident that the duties at the end-client site are complex, unique, or specialized. The Petitioner’s heavy use of industry-related jargon, as well as its vague and generalized descriptions do not convey the substantive nature of the proffered position in a readily discernible manner. It is always the Petitioner’s responsibility to explain-or to ensure that others explain-what these jargon-laden functions involve and how they demonstrate eligibility.¹¹ The Petitioner has not done so here.

We acknowledge the opinion letter submitted from [REDACTED], Associate Professor of Information Systems at [REDACTED] University. [REDACTED]’s letter references the proffered position as though it were an in-house position operating directly within the Petitioner’s business, rather than a position designed to be outsourced through a contractual chain. For instance, [REDACTED] states that the Petitioner requires the services of a UI developer in order to help the Petitioner succeed as it grows. [REDACTED] appears not to consider or recognize a distinct operational difference between working directly for the Petitioner’s business and working for the end-client’s business. Though [REDACTED] discusses the knowledge that may be gained in a computer science program, he does not sufficiently explain the nature of the duties, nor does he connect why this knowledge would be needed for the performance of the duties. The repetition of the duties already provided to us by the Petitioner adds little to our understanding of the nature of the position, particularly when unaccompanied by sufficient analysis to substantiate claims that the duties are complex or unique.

3. Summary of Substantive Nature Issues

The Petitioner has neither consistently nor sufficiently described and documented the proffered position and its duties such that we may discern the nature of the position. Therefore, we cannot determine whether the position requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. Because we cannot determine the substantive nature of the position, we are unable to determine whether the proffered position is a specialty occupation. Accordingly, the petition cannot be approved.

III. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is a 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.

¹¹ *Sagarwala v. Cissna*, 387 F. Supp. 3d 56, 68-70 (D.D.C. 2019).