



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

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

In Re: 9092238

Date: JULY 22, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, an information technology solutions firm, seeks to employ the Beneficiary temporarily 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 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.

I. ANALYSIS

Upon review of the entire record, for the reasons set out below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. The Director concluded that the Petitioner did not establish that the offered position qualifies as a specialty occupation. In her decision, the Director thoroughly discussed the Petitioner's failure to meet any of the four regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)–(4). Upon consideration of the entire record, including the evidence submitted and arguments made on appeal, we adopt and affirm the Director's decision with the comments below.²

On appeal, under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the Petitioner argues that the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* reflects that the profile relating to Training and Development Specialists indicates that those in this occupational area need a bachelor's degree in a wide variety of disciplines. The Petitioner further notes that the

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

² See *Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); see also *Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (“[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings” provided the tribunal's order reflects individualized attention to the case).

Handbook discusses work experience in related occupations and it provides a quote from the *Handbook*. However, we observe that the Petitioner omitted the portions from that quote that tend to undermine its arguments. To illustrate, the Petitioner's quote from the *Handbook* states:

Related work experience is important for most training and development specialists. . . . Employers may prefer to hire candidates with previous work experience in the industry in which the company operates. . . . however, some employers may hire candidates with a master's degree in lieu of work experience.

The full *Handbook* quote actually provides (the portions the Petitioner omitted are in italics):

Related work experience is important for most training and development specialists. *Many positions require work experience in areas such as training and development or instructional design, or in related occupations, such as human resources specialists or teachers.*

Employers may prefer to hire candidates with previous work experience in the industry in which the company operates, *or with experience in e-learning, mobile training, and technology-based tools.* However, some employers may hire candidates with a master's degree in lieu of work experience.

The Petitioner failed to include the portions reflecting work experience should be related to training, instructional design, or other learning methodologies; not previous work experience in the industry in which the company operates, as the petitioning organization posits. As a result, we are not persuaded by the Petitioner's appellate arguments relating to the *Handbook*.

Additionally, the Petitioner submits a new employment verification letter on appeal describing the position offered in the petition. Within this letter dated October 20, 2019, the Petitioner amends the position responsibilities without explanation and introduces new concepts. For instance, the Beneficiary will now be responsible for "STEM OPT/training and supervising as well as other student's internship training program" comprising 10 percent of the Beneficiary's work time. The initial set of duties did not contain any similar functions relating to STEM [science, technology, engineering and mathematics] or OPT [optional practical training], nor did it include any supervisory duties. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to U.S. Citizenship and Immigration Services requirements.³

We observe several other shortcomings within the record that are either inconsistent or appear to be anomalous. Most importantly, the majority of the duties the Petitioner provided—comprising 80 percent of the duties and the position's work time—were copied from websites that existed before the petition filing date. We observe the following duties that were copied and the location of the original source:

³ See *Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998).

1. Identify training and development needs within an organization through job analysis, appraisal schemes and regular consultation with business managers and human resources departments;
2. Design and expand training and development programs based on the needs of the organization and the individual;
3. Consider the costs of planned programs and keep within budgets as assessing the return on investment of any training or development program is becoming increasingly important;
4. Manage the delivery of training and development programs and, in a more senior role, devise a training strategy for the organization;
5. Monitor and review the progress of trainees through questionnaires and discussions with managers;
6. Evaluate training and development programs;
7. Help line managers and trainers solve specific training problems, either on a one-to-one basis or in groups; and
8. Keep up to date with developments in training by reading relevant journals, going to meetings and attending relevant courses.⁴

While a general description may be appropriate when defining the range of duties that one may perform within an occupation, such a generic description generally cannot be relied upon by the Petitioner when discussing the duties attached to specific employment for H-1B approval. In establishing such a position as a specialty occupation, the proffered position's description must include sufficient details to substantiate that the Petitioner has H-1B caliber work for the Beneficiary, and must adequately convey the substantive work that the Beneficiary will actually perform within the Petitioner's business operations.⁵ Here, the job descriptions from the Petitioner do not sufficiently 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.

Additionally, in response to the Director's request for evidence (RFE) the Petitioner discussed requirements of the proffered position that were copied directly from the Occupational Information Network. However, as the above copied duties significantly undermine the Petitioner's eligibility, we

⁴ These examples were found at the following websites that existed prior the petition filing date: (1) <http://standardtechbd.com/AppsTrainingTeam.php>; (2) <https://www.hotnigerianjobs.com/hotjobs/92708/hr-officers-learning-and-development-at-a-leading.html>; (3) <https://www.indeed.com/viewjob?jk=0da107a2cc6fc3db&from=serp&vjs=3>; (4) <http://www.svpprofessionals.com/search.php>; These examples were found through the following search results, https://www.google.com/search?q=%22identify+training+and+development+needs+within+an+organization+through+job+analysis%22&tbs=cdr:1,cd_min:1/1/2010,cd_max:3/1/2019&ei=CoDaXpjJMcic_QbapITYAQ&start=10&sa=N&ved=2ahUKEwiY9pPimOvpAhVITt8KHVoSARsQ8NMDegQICxAu&biw=1920&bih=937.

⁵ DOL guidance states that for a wage level determination, it is important that the job description include "sufficient information to determine the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties." U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

find it unnecessary to describe every instance in which it presented information from other sources as directly applying to the proffered position.

Additionally, the Petitioner submitted five letters from other executives in a similar industry. We observe that the letters' analysis justifying why the position requires a particular degree is virtually identical. This calls into question each letter's independent and credible nature and we will consider them to carry diminished evidentiary value within these proceedings.⁶

Next, within the amended duties the Petitioner offers on appeal, it states that the Beneficiary would help line managers and trainers solve specific training problems." However, a review of the company's organizational chart does not reflect that they employ any other trainers. The Petitioner does not offer an explanation for this inconsistent information. The Petitioner must remedy this dissonant information in the record. Such a rectification must be demonstrated through the submission of relevant, independent, and objective evidence that illustrates which information is accurate.⁷ An additional inconsistency consists of the Petitioner's claim that it employs 40 personnel in information technology positions, when the organizational chart only reflects 28 positions, some of which are not related to information technology. Such an inconsistency adversely effects the Petitioner's eligibility claims.⁸

At page six of the RFE response the Petitioner indicated that "the proffered position requires as a minimum for entry a specialized degree in 'market research,' or where no such degree is available, and equivalent technical degree accompanied by relevant coursework in related studies such as a Bachelor's or Master's Degree in Computer Information Systems." These requirements differed greatly from the other statements within the record and the Petitioner did not offer an explanation for this variance.

Accompanying the appeal, the Petitioner offered a printout of its Training and Development Program. This document contains elements that raise questions about whether this material relates to the Petitioner's operation, or whether it utilized a resource that originated from another organization. The most prominent anomaly within this material is the reference to another company, [REDACTED] [REDACTED]. The document contains several references to that now-defunct organization causing us to question whether it is a training program that originated from the petitioning organization or from another entity. While not determinative, this anomaly reduces the evidentiary value of the document.

⁶ As a general concept, when a petitioner has provided affidavits from different persons, but the language and structure contained within the affidavits is notably similar, the trier of fact may treat those similarities as a basis for questioning the claims of the petitioner. See *Matter of R-K-K-*, 26 I&N Dec. 658, 665 (BIA 2015); *Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006); *Wang v. Lynch*, 824 F.3d 587, 592 (6th Cir. 2016); *Dehonzai v. Holder*, 650 F.3d 1, 8 (1st Cir. 2011). When affidavits contain such similarities, it is reasonable to infer that the petitioner who submitted the strikingly similar documents is the actual source from where the suspicious similarities derive. See *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007). Because someone other than the authors appears to have drafted some portions of the letters, the letters possess diminished probative value. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

⁷ *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

⁸ *Id.*

For all of the above reasons, we conclude that the Petitioner has not described the position's duties and educational requirements with sufficient detail and consistency. Without more, we cannot determine the substantive nature of the proffered position, and consequently, whether it requires an educational background, or its equivalent, commensurate with a specialty occupation. Absent such a foundational showing, we cannot determine whether the proffered position is a specialty occupation. Based on this shortcoming, we cannot find that the Petitioner has sufficiently demonstrated the actual, substantive nature of the work the Beneficiary would perform.

This precludes a finding 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.⁹

II. CONCLUSION

For the reasons outlined above, the Petitioner has not established eligibility for the benefit sought.

ORDER: The appeal is dismissed.

⁹ As the lack of probative and consistent evidence in the record precludes a conclusion that the proffered position is a specialty occupation and is dispositive of the appeal, we will not further discuss the Petitioner's assertions on appeal.