



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

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

In Re: 10106682

Date: JULY 21, 2020

Appeal of California Service Center Decision

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

The Petitioner, an information technology consulting company, seeks to employ the Beneficiary temporarily as a “senior product manager” 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 California 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 Director also determined that the Petitioner did not demonstrate the Beneficiary was qualified to occupy a specialty occupation position. 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. LEGAL FRAMEWORK

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . .” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires “theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(1) of the Act, but adds a non-exhaustive list of fields of endeavor. In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the proffered position must meet one of four criteria to qualify as a specialty occupation position.⁴ Lastly,

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 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 8 C.F.R. § 214.2(h)(4)(iii)(A) must be read with the statutory and regulatory definitions of a specialty occupation under

8 C.F.R. § 214.2(h)(4)(i)(A)(1) states that an H-1B classification may be granted to a foreign national who “*will perform services in a specialty occupation . . .*” (emphasis added).

Accordingly, to determine whether the Beneficiary will be employed in a specialty occupation, we look to the record to ascertain the services the Beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor’s degree or higher in a specific specialty or its equivalent. Without sufficient evidence regarding the duties the Beneficiary will perform, we are unable to determine whether the Beneficiary will be employed in an occupation that meets the statutory and regulatory definitions of a specialty occupation and a position that also satisfies at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The services the Beneficiary will perform in the position determine: (1) the normal minimum educational requirement for entry into 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.⁵

Further, as recognized by the court in *Defensor v. Meissner*, 201 F.3d 384, 387–88 (5th Cir 2000), where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. 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.⁶ 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.

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act.⁷ The Director may request additional evidence in the course of making this determination.⁸ In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication.⁹

section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). 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 specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”).

⁵ 8 C.F.R. § 214.2(h)(4)(iii)(A).

⁶ *Id.*

⁷ 8 C.F.R. § 214.2(h)(4)(i)(B)(2).

⁸ 8 C.F.R. § 103.2(b)(8).

⁹ 8 C.F.R. § 103.2(b)(1).

II. ANALYSIS

Upon review of the record in its totality, we conclude that the Petitioner has not sufficiently established the services in a specialty occupation that the Beneficiary would perform during the requested period of employment. That outcome precludes a determination of whether the proffered position qualifies as a specialty occupation under sections 101(a)(15)(H)(i)(b), 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(i)(A)(I), 8 C.F.R. § 214.2(h)(4)(ii) and (iii)(A).¹⁰

The Petitioner, which is located in Texas, asserts the Beneficiary will work for an end-client via a mid-vendor in California. However, the record does not contain sufficient evidence to establish the services the Beneficiary will perform. Specifically, the record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation. For the reasons discussed below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, we conclude that the record does not establish that the job duties require an educational background, or its equivalent, corresponding with a specialty occupation.

In part, the Director denied the petition because the material from the end-client did not offer a detailed description of the specialized duties the Beneficiary will perform or the qualifications in a specific field of study required to perform those duties. Those two issues speak to the heart of whether the position qualifies under the H-1B program. Within the appeal, the Petitioner only argues that its previously offered material satisfies the specialty occupation requirements, but it failed to inform us how that material was sufficient or how the Director erred in evaluating that evidence.

At best, the Petitioner's appellate claims are that the Director only considered each piece of evidence individually instead of collectively, and had the Director considered the record in its totality, she would have decided to approve the petition. The Petitioner should not simply disagree with the Director's conclusions, then claim that its evidence collectively demonstrates eligibility. Instead, the petitioning organization should explain the manner in which its evidence, when pieced together, supports its claims and more importantly how that collective material meets the statutory and regulatory requirements in this program.

A. Sufficiency of Positions Duties

We begin noting that the Petitioner initially provided the position's description. However, as recognized by the court in *Defensor*, 201 F.3d at 387–88, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. 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.¹¹ Such evidence must be sufficiently detailed to demonstrate the type and educational level

¹⁰ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. Although we may not discuss every document submitted, we have reviewed and considered each one.

¹¹ *Id.*

of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. We observe that the duties the Petitioner provided were identical to the end-client's set of duties and nearly identical to the set the vendor offered. The duties the Petitioner and end-client offered in the initial filing remained the same throughout these proceedings as follows:

1. Develop, define, and deliver a software product line for [REDACTED]
2. Gather inputs from a variety of internal and external sources to define product concepts;
3. Develop detailed requirements, feature definitions, and implementation plans in an Agile project framework. Manage product backlog and user story priorities;
4. Identify problems that arise, outline options, recommend solutions, and escalate as needed;
5. Champion the needs of business teams and stakeholders throughout the development process, ensuring that what is delivered meets the original goals and objectives of the project;
6. Participate in technical discussions and ensure the solution being built meets the business objectives;
7. Work in close collaboration with our engineers and business owners to manage product/project related tasks;
8. Gather business requirements, write BRDs, functional specification, user flows, system flows, technical specification including API specifications;
9. Define the metrics that measure product success, and use data to drive decisions;
10. Conduct customer research activities including market research, usability testing, live on-site experiments, and analysis of site analytics;
11. Aid in leading a team of highly technical developers and testers as part of an agile scrum team; and
12. Communicate and build collaboration at all areas and levels of the business and engineering.

From these duties, it is unclear whether the Beneficiary's job would consist of managing a software development project or whether he would be performing the duties of a software developer. While some duties appear related to the Software Developers, Applications standard occupational classification (SOC) code the Petitioner designated on the labor condition application (LCA), most do not. For instance, while items 1, 3, and 9, could be construed to be somewhat related, item 12 is the only function that appears to directly relate to the duties found within the Occupational Information Network (O*NET) entry for the Software Developers, Applications occupation. The remaining items appear to better align with SOC code 15-1199.09 corresponding with Information Technology Project Managers within the O*NET.

Moreover, the parties failed to offer an explanation or evidence that reveals any discernable information about the project the Beneficiary would work on at the end-client worksite and how that factors into the client's business model other than being "a software product line for [REDACTED] [REDACTED]". This could be a project that would support the SOC code the Petitioner listed on the LCA, or it could relate more to a project manager role. However, as the Director did not raise this as an issue, we will not address it further here other than to note that it raises questions of whether the Petitioner has demonstrated the substantive nature of the position and properly classified the position on the LCA.

Also lacking is any indication of which duties are more prominent than others, meaning the record does not reflect which tasks are major functions of the proffered position. This is an additional missing

factor that, if present, might aid in discerning the nature of the position, and whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline.¹²

Notably, much of the duties the client provided are overly generalized, which undermines the Petitioner's claims that the position's duties are specialized and complex. For example, it is unclear what theoretical and practical application of a body of highly specialized knowledge is required to "[g]ather inputs from a variety of internal and external sources to define product concepts," "[i]dentify problems that arise, outline options, recommend solutions, and escalate as needed," or to "[d]efine the metrics that measure product success, and use data to drive decisions." From the indeterminate nature of the duties, it is not self-evident that they are qualifying under the H-1B program. Without more, it would be difficult to conclude that such amorphous duties are so specialized and complex, or that the duties comprise a position that is so complex or unique, that one must attain a bachelor's degree in a specific specialty in order to perform them.¹³

It is always the Petitioner's responsibility to ensure the record demonstrates what functions make up a position, and how those tasks demonstrate eligibility.¹⁴ Additionally, the truth is to be determined not by the quantity of evidence alone but by its quality.¹⁵ The Petitioner should ensure the material duties sufficiently convey the Beneficiary's regular activities at the end-client location, which allows a person without a great familiarity with the technical nature of these functions to be able to grasp what the position consists of, and why it and the duties are so specialized and complex.¹⁶ To establish eligibility, the end-client must describe the Beneficiary's specific duties and responsibilities in the context of the assigned project; but it has not done so here.¹⁷

Finally, even if the above deficiencies were not present, we would still question whether the duties contained within the end-client correspondence are the actual job functions the Beneficiary would perform at the client worksite. Most of the duties contained within the end-client letter can be found on a website containing resume samples for jobs similar to the one in the petition (e.g., items 2–5 and 7–9).¹⁸ While such a general description may be appropriate when defining the range of duties that one

¹² See *GCCG Inc v. Holder*, 999 F. Supp. 2d 1161, 1167 (N.D. Cal. 2013) (finding that an employer's ability to demonstrate a position qualifies as a specialty occupation is significantly hindered when it does not establish the amount of time a beneficiary would spend performing each duty).

¹³ Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) (indicating U.S. Citizenship and Immigration Services (USCIS) must evaluate the actual tasks, demands, and duties to determine whether a petitioner has established the position realistically requires the specialized knowledge—both theoretical and applied—which is almost exclusively obtained at the baccalaureate level). A broad and generalized presentation of a position's responsibilities prevents USCIS from making such a determination. See also *Sagarwala v. Cissna*, 387 F. Supp. 3d 56, 68 (D.D.C. 2019).

¹⁴ Section 291 of the Act, 8 U.S.C. § 1361.

¹⁵ *Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)).

¹⁶ See *Sagarwala*, 387 F. Supp. 3d at 68–70.

¹⁷ We further note that the end-client did not provide sufficient information with regard to the order of importance and/or frequency of occurrence (e.g., regularly, periodically, or at irregular intervals) with which the Beneficiary will perform the stated functions and tasks. Thus, the record does not specify which tasks are major functions of the proffered position.

¹⁸ See the following URLs visited on July 8, 2020, for examples: <https://webcache.googleusercontent.com/search?q=cache:42Y64rC158wJ:https://www.velvetjobs.com/resume/it-product-manager-resume-sample+&cd=3&hl=en&ct=clnk&gl=us>; https://webcache.googleusercontent.com/search?q=cache:aJaiceHf_j8J:https://www.velvetjobs.com/resume/mobile-

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 usually performs within the end-client's business operations.¹⁹ Here, the job description from the end-client does 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.

Given the lack of detailed information from the end-client, the Petitioner has not sufficiently established the substantive nature of the work that the Beneficiary will 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.

B. Position Prerequisites

Additionally, the Petitioner has not established that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation. The end-client letter the Petitioner offered when it filed the petition lacked any position prerequisites. In response to the Director's request for evidence, the Petitioner offered a second letter from the end-client that was inconclusive as it relates to the requirements to qualify for this position. That second letter only stated that "our minimum requirement for this position is a comprehensive understanding of Product Management functions needed in this role. This can only be performed by virtue of a Bachelor's degree or a Master's degree in a related field." Neither the end-client nor the Petitioner offered more detail on what they would construe as "a related field." We cannot intuit the breadth of the disciplines the parties would, or would not, consider to be sufficiently related. Furthermore, what one employer might consider to be sufficiently related, may differ from what other employers would consider to be adequate. This illustrates the manner in which the position's requirements were not sufficiently specific.

product-manager-resume-sample+&cd=4&hl=en&ct=clnk&gl=us; and <https://www.velvetjobs.com/resume/product-manager-mobile-resume-sample>.

¹⁹ U.S. Department of Labor 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.

The degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. *See* section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Although a general-purpose bachelor's degree may be a legitimate prerequisite for some jobs, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation.²⁰ If we were to presume that the end-client meant that it would accept any information technology or computer-related field, these are broad categories that cover numerous and various specialties, including video game design, cartography, and computer service and maintenance. This should not be interpreted to mean that we expect the relevant parties to accept only a single discipline. It is not readily apparent that every information technology or every computer-related degree would be directly related to the duties and responsibilities of the proffered position. Without more, the petition is not approvable based upon the end-client's own stated minimum education requirements.

We further observe that the Petitioner did not specify a degree requirement in any specialized discipline. And we do not consider this to be a situation in which the end-client does not possess the knowledge relating to the position or the requirements to qualify for it, as their careers portion of their own website contains several similar positions.²¹ Although some subordinate material in the record contain intimations relating to information technology, those attendant samples fall short of satisfying the Petitioner's burden to demonstrate the offered position requires at least a bachelor's degree in a specific specialty.

C. Additional Issues

We observe additional issue that while it does not serve as a basis for this adverse decision, could also pose as a significant hurdle for the Petitioner to demonstrate that the petition should be approved. We note that each senior product manager position on the end-client's website reflects that they require an amount of experience that would mandate a Level IV wage rate on the LCA.²² However, the Petitioner only designated this position at a Level II rate. The difference between a Level IV and Level II rate is approximately \$46,000.

III. CONCLUSION

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, and we decline to reach and hereby reserve the issue regarding the Beneficiary's qualifications to occupy this position.²³

²⁰ *Royal Siam*, 484 F.3d at 147.

²¹ [REDACTED]

²² See the jobs located at the following URLs accessed on July 8, 2020:
[REDACTED] and

²³ *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Further, we decline to reach and hereby

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

reserve the issues regarding the employer-employee relationship and speculative employment. We note that while this appeal was pending, the U.S. District Court for the District of Columbia issued a decision in *Itserve Alliance, Inc. v. Cissna*, --- F.Supp.3d ---, 2020 WL 1150186 (D.D.C. 2020). Subsequently, USCIS rescinded previously issued policy guidance relating to H-1B petitions filed for workers who will be employed at one or more third-party worksites, and directed its officers to apply the existing regulatory definition at 8 C.F.R. § 214.2(h)(4)(ii) to assess whether a petitioner and a beneficiary have an employer-employee relationship. USCIS Policy Memorandum PM-602-0114, *Rescission of Policy Memoranda* at 2 (June 17, 2020), <http://www.uscis.gov/legal-resources/policy-memoranda>.