



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

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

In Re: 9044529

Date: JULY 6, 2020

Appeal of California Service Center Decision

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

The Petitioner, a software development and project management company, seeks to temporarily employ the Beneficiary as a “technical architect II” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). 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 evidence of record does not establish that the proffered position qualifies 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. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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.¹ Lastly,

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

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 1; (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 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. *Id.* 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. 8 C.F.R. § 214.2(h)(4)(i)(B)(2). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 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, which precludes a determination of whether the proffered position qualifies as a

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”).

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)(1), 8 C.F.R. § 214.2(h)(4)(ii) and (iii)(A).²

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. When determining whether a position is a specialty occupation, we look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the performance of those duties within the context of that particular employer's business operations.

On a fundamental level, we conclude that the Petitioner has not sufficiently delineated the substantive nature of the Beneficiary's proposed duties within the end-client's operations. The Petitioner, which is located in Indiana, asserts the Beneficiary will work for an end-client, via two mid-vendors,³ in Wisconsin as a technical architect II.⁴ 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.

The end-client, a state agency that focuses on the educational needs of the children, grants funds to agencies pursuant to various state and federal programs.⁵ The end-client stated that agencies receiving federal funds through it must adhere to the federal and state laws and regulations, and submit applications for grants through their web portal. According to the end-client, the Beneficiary will be "responsible for providing quality assurance and analysis for an innovative federal grants web management system that was designed, developed, and operated" by it. The end-client further stated:

This position will be responsible for performing quality assurance systems testing through manual application testing, load testing, generating test cases, developing regression test plans, and implementing automated system testing scripts. This person will assist the team on implementing quality products while working closely with product owners, developers, systems analyst, and scrum masters to groom and prioritize the team's system testing and integration plans., this person will work closely with others to accomplish project objectives, or independently to accomplish daily work requirements as a member of the Applications Development Team. Objectives, priorities and deadlines are established in consultation with the department program area leaders, project managers, and the Applications Development Team manager.

² 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.

³ The record indicates that the contractual relationship includes the Petitioner, [REDACTED] (vendor 1), [REDACTED] (vendor 2), and the end-client.

⁴ The Petitioner submitted a certified labor condition application (LCA) for the occupational category "Software Developer, Systems Software" corresponding to Standard Occupational Classification (SOC) code 15-1133, with a Level II wage. A petitioner submits the LCA to the Department of Labor (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).

⁵ See <https://dpi.wi.gov/>.

Other responsibilities include: Design, implement, and maintain the organization's application systems and/or IT infrastructure; Provide an architectural framework for information system development, maintenance, and enhancement efforts; Understand user and process requirements and ensure those requirements can be achieved through high quality deliverables; Work closely with developers and engineers to develop road maps for applications, align development plans, and to ensure effective integration among information systems and the IT infrastructure; Monitor technological advancements to ensure that solutions are continuously improved, supported, and aligned with industry and company standards as well as emerging business requirements; Understand the interactions between systems, applications, and services within the environment and evaluate the impact of changes or additions; Analyze systems and perform usability testing to ensure performance and reliability, enhance scalability, and meet security requirements.

The end-client grouped the tasks associated with the proffered position under three categories and indicated the percentages of time the Beneficiary would spend on each category as follows:

- Requirements Gathering and Business Analysis – 15%
- Manual and Automation Testing of Federal Grants web application Functionality – 70%
- Maintenance and Production support of Federal Grants application - 15%

The proffered duties suggest that the Beneficiary will be assisting various teams and will be “working closely with product owners, developers, systems analyst, and scrum masters,” as well as “department program area leaders, project managers, and the Applications Development Team manager.” However, the record does not contain sufficient information regarding the end-client's organizational structure. For example, the Petitioner did not submit an organizational chart of the end-client that would delineate the end-client's organization, and the Beneficiary's position within the end-client's overall organizational hierarchy.⁶ Therefore, the extent of the Beneficiary's duties cannot be determined. The evidence does not show the operational structure within the end-client's project in a manner that would establish the Beneficiary's relative role therein. The Petitioner has not adequately evidenced the scope of the Beneficiary's responsibilities within the context of the asserted collaborative duties.

Furthermore, the record does not contain a sufficiently detailed description of the Beneficiary's duties to establish that the position requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent. The duties such as “[r]eview epics/features and sort priority order, backlog grooming,” “[w]ork on Agile/Scrum Methodology to meet timelines with quality deliverables,” “[e]valuate, recommend, and assist with the implementation of automated testing tools and strategies,” and “[a]ssure Federal Grants web application is functionally stable enough to go to production” do not illuminate the substantive application of knowledge involved or any particular educational requirement associated with such duties. Such a generalized description does not establish a necessary

⁶ The record contains an organizational chart of the Petitioner. However, the Petitioner's chart is insufficient to demonstrate the Beneficiary's position within the end-client's organizational structure of its project.

correlation between the proffered position and a need for a particular level of education, or its equivalency, in a body of highly specialized knowledge in a specific specialty. While the position may require that the Beneficiary possess some skills and technical knowledge in order to perform these duties, the record lacks sufficient information to understand the nature of the actual proffered position and to determine that the duties require the theoretical and practical application of a body of highly specialized knowledge attained by a bachelor's degree, or higher, in a specific discipline.

As noted, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical.⁷ The end-client stated that the proffered position requires "a minimum of a bachelor's [d]egree in [c]omputer [s]cience, [c]omputer [a]pplications, CIS, [i]nformation [t]echnology or related field." The end-client also listed the following "required technical skills" for the proffered position:

- Experience using relational databases (writing queries, etc.) using SQL Server or Oracle.
- Experience using project management software for Scrum (Preferred experience using Visual Studio Online).
- Experience using Visual Studio and Visual Studio Test Manager.
- Experience with functional, regression, load, performance and security testing.
- Experience writing and managing automated test suites using various test software suites.
- Experience using automated testing tools.
- Experience testing and performance/load testing web applications.

The end-client further stated that the proffered position "requires an individual with exceptional skills, not limited to" as follows:

Selenium, Azure DevOps, Team Foundation Server (TFS), MS Test Manager, MS-Office, SQL Server/Oracle, Business Analysis, Test Automation, Test Tool Evaluation, Manual Testing, Test Strategy, Test Planning, Test Cases, Test Scripts, User story writing, .Net, C#, Kendo, Agile/Scrum, Test and Defect Management.

However, the end-client did not explain how the Beneficiary would gain such knowledge; whether the required experience would be at a level of a bachelor's or a higher degree; and also, did not quantify the experience it requires to gain such skills and knowledge. Therefore, the experience requirement as stated by the end-client is insufficient to demonstrate that the position requires the theoretical and practical application of a body of highly specialized knowledge as required by the Act. Moreover, because the end-client did not specify the length of experience it requires, we cannot determine whether the position was certified for the correct wage level.⁸

⁷ See *Defensor v. Meissner*, 201 F.3d at 387-88.

⁸ A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009); http://fildatacenter.com/download/NPWHCGuidance_Revised_11_2009.pdf.

The Petitioner reiterated end-client's degree requirements and claimed that the Beneficiary is well qualified for the position, referencing his qualifications. However, the test to establish a position as a specialty occupation is not the credentials of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. Here, the Petitioner has not established the substantive nature of the Beneficiary's work.

The Petitioner submitted an opinion letter authored by [REDACTED], a professor at [REDACTED] University. In his letter, the professor (1) described the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) described aspects of the previously discussed job duties proposed for the Beneficiary; and (3) stated that these duties require at least a bachelor's degree in computer science, computer applications, computer information systems, information technology or another closely related field. We carefully evaluated the professor's assertions in support of the instant petition but find them insufficient.

The professor stated that he reviewed the Petitioner's "support letter regarding [its] business and operations, and labor condition application information including the beneficiary's qualifications." He also stated that he reviewed "[a]dditional resources, including a review of company website, their Vision Statement, and information relating to offered service, processes, and goals to further understand [the Petitioner's] business model, as well as the details of the proffered position." However, when determining whether a position is a specialty occupation, the nature of the business offering the employment and the description of the specific duties of the position as it relates to the performance of those duties within the context of that particular employer's business operations are critical. Here, the Beneficiary will be performing his duties at the end-client's location for the end-client's project. While the professor points out that he reviewed the Petitioner's website to further understand its business model, he makes no reference to the end-client and what information regarding the end-client, if any, he may have reviewed to understand the end-client's business operations.

In his letter, the professor's analysis falls short of providing a meaningful discussion of what the Beneficiary will actually do in the proffered position at the end-client's location and how those duties require the theoretical and practical application of a body of highly specialized knowledge. While we appreciate the professor's discussion of the proffered duties, his conclusory statements do not sufficiently articulate how he was able to adequately assess the nature of the position at the end-client and appropriately determine the educational requirements of the position based upon the generally described duties. The absence of any substantive discussion of the duties specific to the end-client's project raises doubts about his level of familiarity with the proffered position and also undermines his conclusion regarding the degree requirement of the position and diminishes the probative value of his letter.

In summary, we conclude that the Petitioner has not demonstrated through the professor's letter how an established curriculum of courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to successfully serve in the proffered position. For the reasons discussed, we find that the professor's opinion letter lends little probative value to the matter here. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is "not in accord with other information or is in any way questionable."). For the sake of brevity, we will not address other deficiencies within his analysis of the proffered position.

The Petitioner has not established the substantive nature of the Beneficiary's work. Consequently, this precludes a conclusion 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 entry into the particular position, which is the focus of criterion 1; (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 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.⁹

The Petitioner has not established that the proffered position is a specialty occupation.

ORDER: The appeal is dismissed.

⁹ As the lack of probative 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 regarding the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).