



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

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

In Re: 8494483

Date: JUNE 17, 2020

Appeal of California Service Center Decision

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

The Petitioner, a technology company, seeks to temporarily employ the Beneficiary as a “sales consultant” 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 Director of the California Service Center denied the petition, concluding that the record does not establish that the Beneficiary is qualified to perform the duties of a specialty occupation. On appeal, the Petitioner asserts that the Director erred in the decision.

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case because the Director’s decision is insufficient for review. Specifically, the Director is required to follow long-standing legal standards and determine first, whether the proffered position qualifies for classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The facts of a beneficiary’s background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].”).

As presently constituted, the record does not demonstrate that the proffered position qualifies as a specialty occupation. *See* 8 C.F.R. § 214.2(h)(4)(iii)(A). The Petitioner has not provided sufficient documentation from a probative, authoritative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. The labor condition application (LCA)¹ submitted in support of the H-1B petition classifies the proffered position as being located within the occupational category of “General and Operations Managers” corresponding to the Standard Occupational Classification (SOC) code 11-1021.

¹ A petitioner submits the LCA to 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).

The *Handbook* places this occupation in a sub-category of the “Top Executives” occupation.² Specifically, the *Handbook* reports that the “General and Operations Managers” occupation “oversee[s] operations that are too diverse and general to be classified into one area of management or administration” and that “[r]esponsibilities may include formulating policies, managing daily operations, and planning the use of materials and human resources. They make staff schedules, assign work, and ensure that projects are completed.”³

The *Handbook*’s subchapter entitled “How to Become a Top Executive,” states generally that “[a]lthough education and training requirements vary widely by position and industry, most top executives have at least a bachelor’s degree and a considerable amount of work experience,”⁴ however the *Handbook* does not specify that the bachelor’s degree or work experience must be in a specific discipline. That is, the *Handbook* recognizes that this occupation is multidisciplinary. The *Handbook* adds that “[m]any top executives advance within their own firm, moving up from lower level management occupations or supervisory positions” and that “[t]op executives who are promoted from lower level positions may be able to substitute experience for education to move up in the company. For example, in some industries, workers without a college degree may work their way up to higher levels within the company to become executives or general managers.”⁵ Thus, the *Handbook* acknowledges there are a variety of paths to enter into a top executive position, including a general and operations manager position. The *Handbook* does not describe the normal minimum educational requirement for the occupation in a categorical manner since it appears that some employers accept less than a bachelor’s degree and others accept less than a bachelor’s degree in a *specific specialty*.

Similarly, the DOL’s Occupational Information Network (O*NET) summary report for “General and Operations Managers” under SOC 11-1021.00 does not indicate that a bachelor’s degree *in a specific specialty*, or the equivalent, is normally required. It states that “most of these occupations require a four-year bachelor’s degree, but some do not.”⁶ Therefore, the *Handbook* and O*NET do not support the assertion that at least a bachelor’s degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions.

We also question whether the duties of the proffered position as described in the record of proceedings primarily fall within the parameters of the “General and Operations Managers” occupation as set out in the *Handbook*. Many of the duties of the proffered position, to the extent that the Petitioner has described them with sufficient specificity, appear to fall within the occupational category of “Sales Managers,” under SOC code 11-2022.⁷ In fact, one of the position evaluation letters provided by the

² Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Top Executives, at <https://www.bls.gov/ooh/management/top-executives.htm> (last visited Jun. 17, 2020).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

⁷ We note that if the proffered position has requirements described in a combination of O*NET occupations, the Petitioner should have selected the occupational category with the highest prevailing wage, which in this case may be “sales manager,” See <https://fldatacenter.com/OesQuickResults.aspx?code=11-2022&area= &year=19&source=1> (last visited Jun. 17, 2020). This also raises questions as to whether the LCA corresponds to the petition. 20 C.F.R. § 655.705(b).

Petitioner in response to the Director's request for evidence (RFE) states that the proffered position's duties "are typical of a Sales Manager and clearly correspond to the duties listed under the category of Sales Manager in the OOH" and that "it is clear that this position should be classified as a "Sales Manager" occupation."

The Petitioner describes many duties in vague and abstract terms, making it difficult to ascertain what the performance of many duties would actually involve. For example, it is not readily apparent what the Beneficiary would do to carry out the verbatim duties listed below, why they require specialized knowledge, or what occupational category might best capture them.

- Drive Google's growth through trusted embedded partnerships that create and capture new account opportunities and help agencies and advertisers grown
- Advise agencies on current and potential future platform ecosystems and provide predictions on results by layering multiple products from out tech stack
- Perform proactive and reactive tasks involving new builds, optimization, analysis and reporting to optimize client media spend and performance targets
- Guide client to take informed and insightful decisions on potential audience size through the use of a series of ad-hoc and schedule reports

The Petitioner also uses phrases that have not been defined, nor are they readily comprehensible, such as "clients who are keep to learn," guide clients on how to "create personalized creative," and leverage "data driven creative." Moreover, many of the duties of the position require significant usage of internal or proprietary tools and methodologies. Merely using the tools, a skill which would have to be learned on the job, does not establish that it is specialized. The Petitioner has not adequately explained why use of the tools requires the theoretical and practical application of a body of specialized knowledge that is attained through a bachelor's or higher degree in a specific specialty (or its equivalent).

Finally, the internal and external job postings and the position evaluations submitted for our consideration under other criteria appear to contradict or undermine the Petitioner's conclusions concerning its proffered position.

Accordingly, the matter will be remanded to the Director to consider the specialty-occupation 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.