



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

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

In Re: 9503815

Date: JULY 1, 2020

Appeal of California Service Center Decision

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

The Petitioner, a [] health information technology company, seeks to employ the Beneficiary temporarily as a “bioinformatics scientist II” 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: (1) the labor condition application (LCA) contained the correct prevailing wage rate; (2) the proffered position qualified as a specialty occupation; and (3) the Beneficiary was qualified for the 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.² We review the questions in this matter *de novo*.³ Upon *de novo* review, we will sustain the appeal.

The Petitioner submitted the LCA in which it classified the offered position under the occupational title “Biological Scientists, All Other,” corresponding to the standard occupational classificational code 19-1029.⁴ The Petitioner indicated that the more specific standard occupational classificational (SOC) code was 19-1029.01 relating to the Bioinformatics Scientists occupational category.

Pertaining to the wage rate, the Director compared the Petitioner’s job description with DOL’s generic definition of the wage rather than evaluating the employer’s position requirements utilizing the five-step process outlined within DOL’s guidance.⁵ As such, the methodology the Director utilized

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 The Petitioner is required to submit a certified LCA to the U.S. Department of Labor (DOL) to demonstrate that it will pay the Beneficiary 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 experience and qualifications who are performing the same services. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

⁵ DOL, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009) (DOL guidance), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

was not correct. A review of the position's requirements reflect that the Beneficiary will be compensated at or above the correct prevailing wage rate. We note that the Petitioner offered evidence of the Beneficiary's compensation that is almost at the Level IV wage rate.

Turning to the position, the Director determined that the Petitioner did not satisfy any of the regulatory criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). However, we note that the Director quoted a set of duties from the Occupational Information Network (O*NET) report for Bioinformatics Scientists that the Petitioner supplied in an effort to show that its position aligned with that SOC code in the O*NET. The Director determined those O*NET duties—rather than the actual duties for the position—were so vague and generalized that they did not convey the actual work the Beneficiary would perform in the position. Based on our review of the position's duties, we conclude that the Petitioner has demonstrated that it is more likely than not, that the nature of the position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.⁶ The Petitioner has also established that the position satisfies the statutory definition of a specialty occupation found within section 214(i)(1) of the Act.

Finally, the Director indicated that the Petitioner did not demonstrate the Beneficiary's U.S. degree aligned with the position's duties. A review of the previously submitted evidence to include letters from the Beneficiary's professors, his transcripts, and the U.S. institution's degree program indicates otherwise. Specifically, the evidence establishes that the Beneficiary completed coursework relating to system design and architecture and other concepts that directly correlated to the proffered position's duties. Consequently, we conclude that the Beneficiary is qualified to perform the duties of the proffered position and he has satisfied the requirements in accordance with section 214(i)(2) of the Act and 8 C.F.R. § 214.2(h)(4)(iii)(C).

ORDER: The appeal is sustained.

⁶ 8 C.F.R. § 214.2(h)(4)(iii)(A).