



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

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

In Re: 8797452

Date: JUNE 11, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, a software development and consulting firm, seeks 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. 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 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”).

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

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.⁶ The Director may request additional evidence in the course of making this determination.⁷ In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication.⁸

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 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).⁹

The Petitioner initially provided the position’s description in several paragraphs followed by a separate account within several bullet points. The Petitioner adjusted those duties in response to the Director’s request for evidence (RFE). Based on a lack of sufficient evidence, we conclude that the Petitioner has not established the availability of specialty occupation work, or the actual work the Beneficiary would perform. Individually, each of these shortcomings preclude a determination that the proffered

⁵ 8 C.F.R. § 214.2(h)(4)(iii)(A).

⁶ 8 C.F.R. § 214.2(h)(4)(i)(B)(2).

⁷ 8 C.F.R. § 103.2(b)(8).

⁸ 8 C.F.R. § 103.2(b)(1).

⁹ 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.

position qualifies as a specialty occupation under any of the regulatory criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)–(4).

What the law requires, and employers must demonstrate to USCIS, is the nature of the specialty occupation. Aligning with that authority, USCIS may require the offered position’s job duties to be sufficiently detailed such that it can determine that those daily assignments will be in the specialty occupation. In other words, if the duties are not sufficiently detailed to convey the substantive nature of the position, then a petitioner has not demonstrated that a beneficiary would occupy a qualifying position.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(A)(I) requires that a foreign worker “[w]ill perform services in a specialty occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum requirement for entry into the occupation in the United States . . .” Stated differently, petitioners must demonstrate the nature of the specialty occupation through sufficiently detailed job duties, responsibilities, or functions. A crucial aspect of this matter is whether the Petitioner has sufficiently described the proffered position’s duties such that we may discern 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. We conclude that the Petitioner has not done so.

The Petitioner initially described the proposed duties in terms of general functions that did not sufficiently convey substantive information to establish the relative complexity, uniqueness, and/or specialization of the proffered position or its duties. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the fact that a significant amount of the duties the Petitioner initially provided were either copied verbatim or copied in large part from several resources to include the Department of Labor’s (DOL) Occupational Information Network (O*NET), the Dictionary of Occupational Titles (DOT), or other publicly available Internet sources. In fact, the Petitioner copied some of the duties more than one time. The following represents the duties the Petitioner provided juxtaposed with the existing content from which they copied or appropriated those functions:

Duties the Petitioner Presented	Functions Originating from a Public Source
“ . . . using scientific analysis and mathematical models to predict and measure outcome and consequences of design”	using scientific analysis and mathematical models to predict and measure outcome and consequences of design ¹⁰
“ . . . evaluate user request for new or modified programs to determine feasibility, cost and time required, compatibility with current systems, and computer capabilities.”	Evaluates user request for new or modified program . . . to determine feasibility, cost and time required, compatibility with current system, and computer capabilities. ¹¹

¹⁰ *Details Report for: 15-1133.00 - Software Developers, Systems Software*, O*NET OnLine (May 5, 2020), <https://www.onetonline.org/link/details/15-1133.00>. The Petitioner utilized markedly similar version of this function twice within its paragraph description of the job.

¹¹ *PROGRAMMER-ANALYST (profess. & kin.) alternate titles: applications programmer-analyst*, Dictionary of Occupational Titles (May 5, 2020), <https://www.occupationalinfo.org/03/030162014.html>. The Petitioner utilized markedly similar version of this function twice within its paragraph description of the job.

<ul style="list-style-type: none"> • Developed custom java classes in order to fetch custom Tasks in IIQ • Worked on various Certifications, developed custom tasks and reports • Extensively worked with SailPoint API's to develop custom functionalities to suit Business requirements • Provided production support for existing applications apart from configuring new ones • Configuration of Roles, Policies and Certifications for governance compliance and also configure business 	<ul style="list-style-type: none"> • Developed Custom java classes in order to fetch custom Tasks in IIQ • Worked on various Certifications, task and reports • Extensively worked with SailPoint API to develop custom functionalities • Provided production support for existing application • Configuration of Roles, Policies and Certifications for governance compliance¹²
<ul style="list-style-type: none"> • Working closely with architects, development managers and developers across client accounts in creating, educating, creating awareness & building momentum around MS development tools & the .NET platform frameworks • Providing Platform Leadership to technical resources to meet project deadlines and ensure project objectives are met • Planning, scheduling and coordinating activities related to system development project • Consulting with and mentoring technical resources concerning methods, procedures, and standards to be used during design, development, and unit testing phases of system development projects • Providing systems or technical development expertise to the technical resource team • Communicating issues and status information to the Program Manager and Practice Manager concerning system development activities 	<ul style="list-style-type: none"> • Working closely with architects, development managers and developers across client accounts in creating, educating, creating awareness & building momentum around software applications • Providing technical leadership to technical resources to meet project deadlines and ensure project objectives are met • Planning, scheduling and coordinating activities related to system development project • Consulting with and mentoring technical resources concerning methods, procedures, and standards to be used during design, development, and unit testing phases of system development projects • Providing systems or technical development expertise to the technical resource team • Communicating issues and status information to the Program Manager and Practice Manager concerning system development activities¹³

We identified additional lengthy passages from several other public websites. However, based on our above findings, it is unnecessary that we expend the time and space here to recount them, as we have sufficiently demonstrated the Petitioner's propensity to utilize existing material to represent its own proposed work. The copied duties we discussed above were not only provided initially with the

¹² *Sailpoint consultant Resume*, Hire IT People (May 5, 2020), <https://www.hireitpeople.com/resume-database/64-java-developers-architects-resumes/97483-sailpoint-consultant-resume-kansas-city-mo>.

¹³ *Careers QA Trainer*, GLOBALTEK SYSTEMS (May 5, 2020), <http://globalteksystems.com/careers.html>.

petition, but all subsequently amended sets of duties the Beneficiary would purportedly perform contained some form of the appropriated content.

Providing generic job duties for a proffered position from O*NET, the DOT, or another Internet source, however, is generally insufficient to establish H-1B eligibility.¹⁴ The duties themselves provide the nature of the employment.¹⁵ While this type of description may be appropriate when defining the range of duties that may be performed within an occupational category, it does not adequately convey the substantive work that the Beneficiary will perform in the job in the petition.¹⁶ 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. Based on the appropriated job functions, we conclude that the remaining evidence in the record does not overcome the adverse nature of the copied duties.

We further note that the Petitioner has provided inconsistent information regarding the minimum requirements for the proffered position. Namely, when it filed the petition the Petitioner required a bachelor's degree in a specific field "with additional experience in practical application or theoretical knowledge of computer science or a specialized field of study with substantial training and/or experience in designing and implementing computer based models and solutions to practical and technical problems" However, within its response to the Director's RFE, it only required a bachelor's degree or the equivalent. Consequently, the Petitioner has offered inconsistent position prerequisites, it failed to offer the job advertisement or similar material for the proffered position, and we are unable to determine its actual position requirements. The Petitioner must ameliorate this discordant information in the record. Such a correction must be demonstrated through the submission of relevant, independent, and objective evidence that illustrates which information is the truth.¹⁷

We further note that the Petitioner submitted six job advertisements it claims are sufficiently similar to the position in this petition. All six of those job advertisements required a bachelor's degree and work experience (up to eight plus years of experience). This appears to indicate that the Petitioner's initial account of its position requirements may have been the most accurate as each of these advertisements require experience and it appears more likely than not that an information technology project leader would necessitate experience in the industry. As a result, the Petitioner has failed to establish its actual position requirements. The Petitioner did not provide an explanation for the variances in its position requirements, and it therefore has not satisfied its burden of proof.

We observe additional shortcomings within the record. For instance, the Petitioner initially provided a Statement of Work that was supposed to be executed between the petitioning organization and

¹⁴ Cf. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990) (stating specifics are an important indication of the nature of a beneficiary's duties, otherwise meeting the requirements would simply be a matter of providing a job title or reiterating the regulations.)

¹⁵ *Id.*

¹⁶ 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.

¹⁷ *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

[redacted] relating to the contractual relationship that would facilitate the work the Beneficiary would perform. While the cover page of this Statement of Work reflected the agreement was between the Petitioner and [redacted], the signature page was not only unsigned by one of the parties, but it also did not list the petitioning organization as a party to that contract. Instead, it listed [redacted] as the company that failed to sign that Statement of Work.

However, within the RFE response the Petitioner provided the same cover page for this Statement of Work, but replaced the signature page and failed to elucidate (1) why it initially offered material that was unrelated to the petitioning organization, and (2) why it replaced that material without offering an explanation. An additional shortcoming within both versions of the Statement of Work was that it only included two of the Beneficiary's first names but omitted his third first name and failed to reflect either of his last names. As a result, the Petitioner has not sufficiently demonstrated that this Statement of Work included the Beneficiary as a resource on the project.

III. CONCLUSION

We conclude that the Petitioner has not demonstrated the reliability of its job description and, consequently, has not established the substantive nature of the proffered position and its constituent duties. Absent that foundational showing, we cannot determine whether the proffered position is a specialty occupation.

Therefore, based upon our review of the record, we conclude that the Petitioner has not established the substantive nature of the work the Beneficiary will perform. 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 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.

Based on the foregoing, we cannot conclude that the proffered position qualifies as a specialty occupation, and we will dismiss the appeal.¹⁸

ORDER: The appeal is dismissed.

¹⁸ 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 discuss the Petitioner's assertions on appeal.