



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

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

In Re: 8773748

Date: JULY 1, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a “full stack engineer” 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 Vermont Service Center denied the petition, concluding that the evidence of record does not establish that: (1) the Petitioner will have an employer-employee relationship with the Beneficiary; and (2) the proffered position qualifies as a specialty occupation.

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. SPECIALTY OCCUPATION**

**A. Legal Framework**

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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 this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

## B. Analysis

Upon review of the record in its totality, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation because the record lacks sufficient evidence of the actual work that the Beneficiary will perform for the end-client.<sup>1</sup>

As recognized in *Defensor*, 201 F.3d at 387-388, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s) in order to properly ascertain the minimum educational requirements necessary to perform those duties. In other words, as the employees in that case would provide services to the end-client and not to the petitioning staffing company, the job duties and alleged requirements to perform the duties that the Petitioner provided were irrelevant to a specialty occupation determination. *See id.*

Here, the Petitioner asserts that the Beneficiary will be employed offsite at an end-client’s location. The Petitioner provides a letter from the end-client, which includes a brief description of the Beneficiary’s job duties.<sup>2</sup> Upon review, we note that the duty description is too vague to determine

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<sup>1</sup> The Petitioner submitted documentation in support of the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

<sup>2</sup> The record of proceedings includes a job description for the proffered position that states the approximate percentage of time the Beneficiary will spend on each duty, and the Beneficiary’s related courses; however, the document is not endorsed

whether the position actually requires a bachelor's or higher degree in a specific specialty, or its equivalent. For example, the end-client does 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 functions and tasks. Thus, the end-client does not specify which tasks are major functions of the proffered position.

In addition, the description does not provide sufficient information about the duties to determine their complexity and whether the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or its equivalent. Below are the duties:

- Development and maintenance of multi-tenanted data transactions via ICRAS [Information Collection Request, Review and Approval System] used by both Department of Education (EDU and Environmental Protection Agency (EPA);
- Work with server-side scripting to send out automated alerts based on business logic using Rake tasks and providing solutions for purging stale data from databases;
- Work with multi-tenanted authentication systems for different departments and clean up code to enable overriding based on departmental traffic.

Moreover, although the Petitioner submitted an agreement and work order executed between itself and the end-client, the documents do not contain sufficient evidence outlining the nature of the Beneficiary's proposed assignment on the end-client's premises. For instance, the documents do not mention the Beneficiary's job duties.

Furthermore, we observe that the end-client does not state the educational requirements for this position. The record, therefore, lacks documentation or information about the end-client's educational requirements for the position and whether such educational requirements would match the Petitioner's requirements and qualify for a specialty occupation and meet the wage level specified on the labor condition application. Consistent with *Defensor*, where the work is to be performed for entities other than the Petitioner, evidence of the client companies' job requirements is critical. However, the record of proceedings does not contain such evidence.

Without documents from the end-client that sufficiently provide pertinent information such as the Beneficiary's assigned projects and detailed duties to demonstrate what he will actually do on a day-to-day basis, we cannot determine the substantive nature of the proffered position. As the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, 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 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

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by the Petitioner nor the end-client, and it is not on company letterhead. Moreover, the job duties are significantly different from the end-client's job description listed above. Thus, it is not clear who drafted the job duties.

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.

## II. CONCLUSION

The Petitioner has not established that the proffered position is a specialty occupation.<sup>3</sup> The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> As the ground discussed above is dispositive of the Petitioner's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on whether the Petitioner has established an employer-employee relationship with the Beneficiary.