



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

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

In Re: 9126871

Date: JULY 2, 2020

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker

The Petitioner seeks to temporarily employ the Beneficiary 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 Petitioner had not established that the Beneficiary would be employed in a specialty occupation position. On appeal, the Petitioner submits additional evidence and asserts that the Director erred in denying the petition.

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 Upon *de novo* review, the decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

As noted, the Director concluded that the proffered position is not a specialty occupation. However, we find that conclusion premature, as the record of proceedings at the current time is not sufficiently developed so as to allow us to determine whether the certified labor condition application (LCA) corresponds to and supports the petition. Without knowing the answer to that question, we cannot determine the actual, substantive nature of the position, which means that as this record currently stands, we cannot make a determination on the specialty-occupation question.

The purpose of the LCA wage requirement is "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers."<sup>1</sup> It also serves to protect H-1B

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<sup>1</sup> See Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-56).

workers from wage abuses. 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). While DOL certifies the LCA, U.S. Citizenship and Immigration Services (USCIS) determines whether the LCA's content corresponds with the H-1B petition. *See* 20 C.F.R. § 655.705(b) ("DHS determines whether the petition is supported by an LCA which corresponds with the petition,....").

The Petitioner, which is located in [ ] North Carolina, asserts the Beneficiary will work as a "DevOps/Cloud Migration Engineer" for an end-client via a mid-vendor in [ ] Texas. On the LCA, the Petitioner designated the proffered position under the occupational category for "Software Developers, Applications," corresponding to the Standard Occupational Classification (SOC) code 15-1132. The Petitioner selected a Level II wage as consonant with the job requirements, necessary experience, education, special skills, and other requirements of the proffered position.

When comparing the proposed duties of the proffered position to those provided in the Occupational Information Network (O\*NET), it is not clear that the Petitioner selected the appropriate SOC code for the proffered position. The DOL's "Prevailing Wage Determination Policy Guidance" provides clear guidance for selecting the most relevant O\*NET occupational code classification, as follows:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O\*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification . . . . If the employer's job opportunity has worker requirements described in a combination of O\*NET occupations, the NPWHC should default directly to the relevant O\*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the NPWHC shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

According to O\*NET, software developers working under SOC code 15-1132 generally:

Develop, create, and modify general computer applications software or specialized utility programs. Analyze user needs and develop software solutions. Design software or customize software for client use with the aim of optimizing operational efficiency. May analyze and design databases within an application area, working individually or coordinating database development as part of a team. May supervise computer programmers.

O\*NET also contains an entry for "Software Developers, Systems Software" (SOC code 15-1133).<sup>2</sup> Software developers working under this category generally:

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<sup>2</sup> *See* <https://www.onetonline.org/link/summary/15-1133.00>.

Research, design, develop, and test operating systems-level software, compilers, and network distribution software for medical, industrial, military, communications, aerospace, business, scientific, and general computing applications. Set operational specifications and formulate and analyze software requirements. May design embedded systems software. Apply principles and techniques of computer science, engineering, and mathematical analysis.

In addition, O\*NET also contains an entry for “Computer Systems Engineers/Architects,” corresponding to SOC Code 15-1199.02. Individuals working in this occupational category generally:

Design and develop solutions to complex applications problems, system administration issues, or network concerns. Perform systems management and integration functions.

As noted above, the Petitioner seeks to employ the Beneficiary as a “DevOps/Cloud Migration Engineer” at its end-client location. 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 Director should therefore compare the job descriptions the end-client provided in its letters to (1) software developers, applications; (2) software developers, systems software; (3) computer systems engineers/architects; and (4) any other related occupations in O\*NET to determine whether the Petitioner selected the most appropriate SOC code for the proffered position.

The Director should then determine whether the Petitioner selected the proper wage level. Specifically, the Director should consider the experience the end-client requires for the proffered position as represented in its letters. Both letters from the end-client state that in addition to possessing a bachelor’s degree (or foreign equivalent) in Computer Science or Computer Engineering, the Beneficiary must also have:

- 8+ years of experience in general
- 3 years of experience in AWS cloud
- 5+ years of Tools Experience such as Jira, Jenkins, Selenium, Maven

Consequently, the Director should consider whether the experiential prerequisites that the end-client requires would warrant an increase in the prevailing wage level at a higher rate than the Level II rate the Petitioner designated on the LCA under step two of DOL’s five-step process.<sup>3</sup>

As the Petitioner was not previously accorded the opportunity to address the above, we will remand the record for further review of these issues. The Director may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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<sup>3</sup> The Specialized Vocational Preparation (SVP) rating cited within O\*NET’s Job Zone for “Software Developers, Applications” (SOC Code 15-1132) designates this occupation as 7.0 < 8.0. An SVP rating of 7 to less than (“<”) 8 indicates that the occupation requires “over 2 years up to and including 4 years” of training. Therefore, even if the Director determines that the Petitioner selected the correct SOC code for the position, it appears that the Petitioner did not select the appropriate wage level based on the end-client’s requirement of at least 8 years of experience.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.