



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 10592648

Date: SEP. 30, 2020

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker

The Petitioner, an information technology consulting company, seeks to temporarily employ the Beneficiary as a “systems analyst” 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 on two separate grounds, concluding that the record did not establish that: (1) the proffered position qualifies as a specialty occupation and (2) the Petitioner will maintain an employer-employee relationship with the Beneficiary. The matter is now before us on appeal.

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. LEGAL FRAMEWORK

Section 214(i)(I) of the Act, 8 U.S.C. § 1184(i)(I), 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, 387-88 (5th Cir. 2000).

As recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

II. THE PROFFERED POSITION

The Petitioner, which is located in [redacted] Illinois, stated that the Beneficiary will perform his duties at an offsite location in [redacted] Illinois for [redacted] (end-client). The path of contractual succession for the offsite work flows from the Petitioner directly to the end-client. The Petitioner submitted a letter from the end-client briefly confirming its contract with the Petitioner and the following documentation outlining their business relationship: a copy of its Consulting and Services Agreement, a copy of Task Order #39, and a copy of First Amended and Restated Task Order #39. However, none of the submitted documents from the end-client identify the Beneficiary as an employee of the Petitioner assigned to work with the end-client, nor provide information pertaining to the duties or the specific educational requirements for entry to the proffered position. In its letter, the end-client merely stated that it expects the Petitioner’s employees working on its projects “will be

degreed professionals or will have the education/experiential equivalent of a bachelor's degree in a relevant field.”

The Petitioner described the proffered position as a “systems analyst” and provided its own list of job duties, along with the percentages of time devoted to those duties and additional tasks the Beneficiary would perform in carrying out the duties, and the educational requirements for entry. In its initial letter of support, the Petitioner indicated that the minimum entry requirement is a bachelor's degree, or equivalent, in computer science, engineering or a related field. Then, in response to the Director's request for evidence (RFE), the Petitioner stated that the minimum entry requirement is a bachelor's degree, or equivalent, in computer science, computer engineering, or a related computer or IT field. Finally, on appeal the Petitioner states that the minimum entry requirement is a bachelor's degree, or equivalent, in computer science, engineering, or a related IT field.

III. ANALYSIS

For the reasons set out below, we have determined that the proffered position does not qualify as a specialty occupation. Specifically, the record does not describe the proffered position in sufficient detail to establish the substantive nature of the position, which precludes a determination that the proffered position qualifies as a specialty occupation under at least one of the four regulatory specialty-occupation criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).¹

We determine that the evidence is insufficient to establish that the proffered position qualifies for classification as a specialty occupation. As recognized in *Defensor*, 201 F.3d at 387-88, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location in order to properly ascertain the minimum educational requirements necessary to perform those duties. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the Petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. See *id.*

Here, the record of proceedings does not provide sufficient information from the end-client regarding the project assignment or the specific job duties to be performed by the Beneficiary. The Petitioner submitted an Itinerary of Services for the Beneficiary indicating that the Beneficiary would be assigned to the [REDACTED] project. The Petitioner included a brief project description and listed the job duties of the proffered position. However, neither of the end-client Task Orders submitted specifically identify the Beneficiary as assigned to this project and do not outline the expected duties or education requirements for the proffered position. Nor has the Petitioner submitted any other documentation from the end-client outlining this information. Thus, the Petitioner has not provided sufficient evidence from the end-client to establish that the proffered position qualifies as a specialty occupation.

¹ 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.

Throughout the record, the Petitioner described the Beneficiary's job duties in brief, generalized terms that fail to convey the substantive nature of the proffered position and its constituent duties. For example, at the time of filing and in response to the RFE, the Petitioner stated that the Beneficiary would perform the following duties:

- Σ Understand requirements by establishing personal rapport with potential clients and assist with building design documents. Based on these discussions, come up with detailed specification documents that must be used by the development team. 20%
- Σ Write programs by encoding project requirements using J2EE technologies, enter coded information into the computer and execute unit testing to make sure code works as per specifications and pushes the unit tested code to the appropriate version control. 50%
- Σ Collaborate with stakeholders such as Business team, and lead testing activities to create an exhaustive integration testing strategy and test plan. Confirm program operations by conducting tests; modifying program sequence and/or codes. 20%
- Σ Work with Project Manager to ensure implemented functionality meet architectural design guidelines. 5%
- Σ Deploy and support software in production environment. 5%

Then, on appeal, the Petitioner submits the same job duties but changes the percentage of time the Beneficiary would devote to each duty as follows: 40%, 25%, 25%, 5%, and 5%, respectively. While this change may appear minimal, it appears to shift the focus of the proffered position from "writing programs" to "understanding requirements and coming up with specification documents for the development team." Further, while the Petitioner provided the tasks associated with the listed duties, such as participate in requirement understanding meetings with business analyst and business project owners, come up with the prototype of solution and execute proof of concept, study the existing process flow, code and execute the unit test cases to test the business rules applied on the data, push the unit tested code to the appropriate code repository, identify the hardware and software dependencies for executing the required test cases, work with data owners to ensure production like data covering all business scenarios will be available for testing, develop the Test Approach to cover various testing, ensure compliance to application and security guidelines, and develop the Project Implementation Plan, these tasks do not provide any additional explanation regarding the Beneficiary's level of participation in the end-client's project.² Here, the list of duties and additional tasks provided by the Petitioner do not contain a detailed description explaining what the Beneficiary will actually do for the end-client or its project. While the Petitioner provided a vague description of the position, it did not provide a detailed explanation regarding the demands, level of responsibilities, or complexity of these duties.

Further, while the Petitioner provided additional tasks associated with performing the listed job duties for the proffered position, some of the listed information pertains to skills or knowledge it claims are required for the position. For example, the Petitioner used specific language when listing the "tasks related to each duty," such as "prior knowledge of," "experience with," "understanding of," "core concepts of . . . required," "need of knowing use of," "need deep understanding of," "need to have

² While the Petitioner provided several job duties for the proffered position, we will not list each one. We note that this is not an exhaustive list of all vague and generalized duties for which the Petitioner has not provided additional information or explained the requirement for the theoretical and practical application of a body of highly specialized knowledge. The Petitioner should not assume that any duties not listed here are otherwise persuasive.

expertise in,” “complete understanding of,” and “a lot of knowledge of.” However, this information is not indicative of actual duties or responsibilities the Beneficiary would have in the proffered position, but rather, of specific skills the Petitioner would expect the Beneficiary to possess.

The Petitioner described the position in terms of generic functions that do not convey sufficient substantive information to establish the relative complexity, uniqueness, and/or specialization of the proffered position or its duties. Here, neither the Petitioner’s statements nor the end-client Task Orders provide sufficient insight into the Beneficiary’s actual duties, nor do they include details regarding the specific tasks that the Beneficiary will perform as they relate to an assigned project for the end-client. The provided information does not demonstrate how the performance of these duties, as described in the record, would require the attainment of a bachelor’s or higher degree in a specific specialty, or its equivalent.

Overall, the Petitioner has not provided sufficient details regarding the nature and scope of the Beneficiary’s employment or substantive evidence regarding the actual work that the Beneficiary would perform for the end-client. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation’s level of knowledge in a specific specialty. The position as described does not 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.

As a result, the Petitioner has not established the substantive nature of the work that 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 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. Therefore, we cannot conclude that the proffered position qualifies for classification as a specialty occupation.

IV. EMPLOYER-EMPLOYEE RELATIONSHIP

The Director denied the petition on two separate grounds, one of which concluded that the Petitioner would not maintain an employer-employee relationship with the Beneficiary. However, we will reserve this issue as we have found that the proffered position is not a specialty occupation.

V. CONCLUSION

The appeal will be dismissed for the above stated reasons.³ 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.

³ As this issue precludes approval of the petition, we will not address any of the additional matters we have observed in our de novo review of this matter, except to notify the Petitioner that the record is not currently sufficient to establish that the Beneficiary is qualified to perform the duties of the proffered position. Specifically, the Petitioner did not submit an evaluation of the Beneficiary's foreign degree or sufficient evidence to establish that his degree is equivalent to a U.S. bachelor's degree in a specific specialty. The Petitioner should be prepared to address this issue in any future H-1B filings.