U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8826329

Date: JUNE 30, 2020

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as an "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 California Service Center Director denied the petition, concluding that the Petitioner had not established that there is a reasonable and credible offer of employment and that no contractual documents were submitted to corroborate that the Petitioner had specialty occupation work available, and thus the position had not been established as a specialty occupation.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence.[1] The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*.[2] The matter will be remanded to the Director for further review of the record and a new decision.

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)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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)(l) 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

[1] Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).
[2] *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

proffered position must meet one of four criteria to qualify as a specialty occupation position.[3] Lastly, 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 perform services in a specialty occupation, we look to the record to ascertain the duties the Beneficiary will perform and whether such duties 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. In this matter, the record does not include sufficient evidence regarding the duties the Beneficiary will perform, so that we are able to conclude that the Beneficiary will be employed in an occupation that meets the statutory and regulatory definitions of a specialty occupation and that the position also satisfies at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

II. ANALYSIS

Upon review of the record in its totality, we conclude that the Petitioner established that it has work available for the Beneficiary to perform and had work available when the petition was filed. Additionally, the record establishes that the Petitioner extended a credible offer of employment to the Beneficiary. The Petitioner, however, has not established that the work to be performed 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) and 8 C.F.R. § 214.2(h)(4)(ii) and (iii)(A).

On the labor condition application (LCA)[4] submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Occupations, All Others" corresponding to the Standard Occupational Classification (SOC) code 15-1199, occupation at a Level II wage. This occupational category includes several subcategories, including SOC code 15 1199.08, "Business Intelligence Analysts," which the Petitioner identifies as the occupation that most closely corresponds to the proffered position. The Petitioner submitted a broad overview of the proffered position that appears to include routine tasks that involve the use of programming languages and third-party software.

The descriptions did not include the necessary elaboration and clarifying information to identify the nature of the proposed occupation and the academic knowledge necessary to perform the listed duties. Moreover, the Petitioner created ambiguity in the record with inconsistent information regarding the academic requirements to perform the position and the position evaluation submitted did not present a cogent analysis of why the generally described duties require a bachelor's degree in a specific specialty, or its equivalent. The record lacks sufficiently probative and informative evidence to

[3] 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").

[4] The Petitioner is required to submit a certified LCA 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 experience and qualifications who are performing the same services. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty, or its equivalent.

As the Petitioner was not previously accorded the opportunity to address the deficiencies in the record discussed above, we will remand the record for further review. The Director may request any additional evidence considered pertinent to the new determination.

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