



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

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

In Re: 9042239

Date: JULY 2, 2020

Appeal of California Service Center Decision

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

The Petitioner, an information technology company, seeks to extend the Beneficiary's temporary employment as a "market research analyst" under the H-1B nonimmigrant classification for specialty occupations. 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 record did not establish the position qualifies 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. 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 cannot determine the substantive nature of the proffered position, which precludes a determination of whether that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).¹

When determining whether a position is a specialty occupation, we review the H-1B petition and the supporting documents to ascertain the salient aspects of the proposed employment. A crucial aspect of this matter is whether the Petitioner has submitted sufficient and consistent evidence describing the duties of the proffered position 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. See sections 101(a)(15)(H)(i)(b), 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). The substantive nature of the work determines (1) the normal minimum educational requirement for entry into 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;

¹ 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.

(3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 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 4.² 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, U.S. Citizenship and Immigration Services must be able to determine the substantive nature of a proffered position's duties before it can determine whether such a position qualifies as a specialty occupation.

The Petitioner describes the proffered "market research analyst"³ position's duties as follows:

- [B]e responsible for developing market insights and recommendations for new online and hybrid education programs for learners at [the Petitioner] and around the world, including strategizing new online courses, programs, certificates and/or degrees.
- [C]ollect, analyze and synthesize qualitative and quantitative data related to graduate and professional education, including material on workforce trends, job market data, prospective students and competitive digital-based education.
- [C]onducting surveys and focus groups of target audiences of prospective students and employers.
- [W]ork closely with teachers, admission staff and students to improve as-is processes and develop and recommend best processes and industry practices.

On the labor condition application (LCA)⁴ submitted in support of the petition, the Petitioner designated the proffered position in the "Market Research Analysts and Marketing Specialists" occupational category, corresponding to the Standard Occupational Classification (SOC) code 13-1161.00 from the Occupational Information Network (O*NET). According to the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, "Market Research Analysts" typically "study market conditions to examine potential sales of a product or service. They help companies understand what products people want, who will buy them, and at what price." Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Market Research Analysts, <https://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-2> (last visited June 24, 2020).⁵ In turn, the

² 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 further discuss the Petitioner's assertions on appeal regarding the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

³ To determine whether a particular job qualifies as a specialty occupation, we do not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. We must examine the ultimate employment of the individual, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

⁴ A petitioner submits the LCA to 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).

⁵ The *Handbook* is a source of information on the duties and educational requirements of the wide variety of occupations that it addresses. However, we do not maintain that the *Handbook* is the exclusive source of relevant information.

O*NET summary report for “Market Research Analyst and Marketing Specialists” indicates that typical duties of positions in the occupational category include the following types of tasks:

- Seek and provide information to help companies determine their position in the marketplace.
- Collect and analyze data on customer demographics, preferences, needs, and buying habits to identify potential markets and factors affecting product demand.
- Gather data on competitors and analyze their prices, sales, and method of marketing and distribution.
- Measure the effectiveness of marketing, advertising, and communications programs and strategies.
- Prepare reports of findings, illustrating data graphically and translating complex findings into written text.

O*NET OnLine Summary Report for “13-1161.00 – Market Research Analysts and Marketing Specialists,” <http://www.onetonline.org/link/summary/13-1161.00> (last visited June 24, 2020).

Unlike the information in the *Handbook* and the O*NET summary report, the position’s duty description does not address helping a company understand what products people want, who will buy them, and at what price; determining a company’s position in the marketplace; collecting and analyzing data on customer buying habits and factors affecting product demand; gathering data on competitors and analyzing their prices, sales, and methods of marketing; measuring the effectiveness of advertising programs and strategies; preparing reports of findings; and other typical tasks associated with “Market Research Analysts and Marketing Specialists.” Instead, the Petitioner’s description addresses “developing . . . recommendations for new online courses”; “collect[ing], analyz[ing] and synthesiz[ing] qualitative and quantitative data related to graduate and professional education, including material on workforce trends”; and “work[ing] closely with teachers, admission staff and students to improve as-is processes and develop and recommend best processes and industry practices.”⁶ The dissimilarities between the Petitioner’s duty description and typical duties summarized in the *Handbook* and the O*NET summary report for the designated occupational category, and the similarities between the duty description and typical duties of other, distinct occupational categories, present inconsistent information regarding the substantive nature of the proffered position designated in the “Market Research Analysts and Marketing Specialists” occupational category.

In summation, we conclude that the record does not establish the actual substantive nature of the proffered position, which therefore precludes a determination of whether the position qualifies as a specialty occupation.

⁶ The description bears some similarities to typical duties of other occupational categories, such as “Instructional Designers and Technologists” and “Operations Research Analysts.” See O*NET OnLine Summary Report for “25-9031.01 – Instructional Designers and Technologists,” <http://www.onetonline.org/link/summary/25-9031.01> (last visited June 24, 2020); see also O*NET OnLine Summary Report for “15-2031.00 – Operations Research Analysts,” <http://www.onetonline.org/link/summary/15-2031.00> (last visited June 24, 2020). The similarities between the position’s duties and those of other occupational categories raise questions regarding whether the LCA corresponds to the petition.

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.