



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

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

In Re: 8476282

Date: JULY 1, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, an information technology services firm, seeks to temporarily employ the Beneficiary as a “Java developer” 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

For the reasons set out below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

1. Place of Employment

As a preliminary matter, we observe that the Petitioner has provided inconsistent information regarding the Beneficiary’s place of employment. The Petitioner initially stated that the Beneficiary would work in-house providing services to an end-client. However, the record of proceedings shows that the Beneficiary may work offsite at the end-client’s location. For instance, the subcontractor agreement between the Petitioner and the vendor states that the “[a]ssigned Employees will report to the Customer location.” Moreover, in the response to the Director’s request for evidence, the Petitioner stated “[w]hile the Beneficiary is working at the end-client’s location. . . .” In addition, the offer letter states that the Beneficiary’s “primary responsibility will be to provide software

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.

development and programming support to clients of [the Petitioner] at the location of the client located in the continental United States.” Furthermore, on appeal, the Petitioner states “the Petitioner’s right to control the Beneficiary’s employment while at the client location.” The Petitioner did not provide an explanation for the variances in the Beneficiary’s work site location.²

2. Job Description

Moreover, a crucial aspect of this matter is whether the Petitioner has sufficiently described 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. When determining whether a position is a specialty occupation, we look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the performance of those duties within the context of that particular employer’s business operations.

First, we observe that the record lacks sufficient detail and concrete explanation regarding the project for which the Beneficiary will be assigned, to establish the substantive nature of the work the Beneficiary will be performing for the end-client, and the associated applications of specialized knowledge that their actual performance will require.

In the instant matter, the Petitioner described the proffered position’s duties, as follows:³

- Create the RESTful webservices combining with the Microservices architecture and Distributed computing concepts to create and deploy robust applications in the cloud environment;
- Object-Oriented Analysis and design the microservices using the design patterns and following the SOLID principles using Java, Spring Framework;
- Write PowerShell scripts to automate the manual process of data migration from different environments, import and export the databases;
- Regularly monitor the databases, update them and back the databases on a weekly basis in case of environment failures; and
- Create CI/CD pipelines following the DevOps principles to automate the deployments integrated with the BitBucket source control and automate the data transfer jobs from environments within the SaaS for various products.

Notably, the Petitioner does not define the terms “RESTful webservices,” “SOLID principles,” “CI/CD pipelines,” “SaaS” and does not explain why working with these applications requires a

² This uncertainty with regard to the Beneficiary’s actual work site raises questions as to whether the labor condition application corresponds to and supports the H-1B petition, as required. As the proffered position is not a specialty occupation, we will not address this issue further, other than to advise the Petitioner that it should be prepared to address the issue in any future H-1B filings.

³ The record of proceedings includes a job description for the proffered position that provides additional information for each task and the approximate percentage of time the Beneficiary will spend on each duty; however, the document was not signed or otherwise endorsed by the Petitioner nor the end-client, and it was not prepared on company letterhead. Thus, it is not clear who drafted the job duties.

bachelor's degree in computer science. Moreover, the Petitioner does not clearly define what databases will be regularly monitored, updated and backed up on a weekly basis. In addition, some of the duties focus on an outcome or result, rather than the process undertaken to produce such an outcome or result. One example is the duty to "[c]reate the RESTful webservice combining with the Microservices architecture and Distributed computing concepts to create and deploy robust applications in the cloud environment." Another example is the duty to "[w]rite PowerShell scripts to automate the manual process of data migration from different environments, import and export the databases." Such circular descriptions do not meaningfully convey the duties of the position apart from its overall outcome.

The generally-stated duties provided by the Petitioner, which the vendor repeats verbatim, without the context of a specific project, and the Beneficiary's actual role in the project adds little to our understanding of the Beneficiary's duties. The job description lacks sufficient detail and concrete explanation to establish the substantive nature of the work the Beneficiary will be performing for the end-client, and the associated applications of specialized knowledge that their actual performance will require. With the broadly described duties, and insufficient evidence regarding work specific to a particular project, the record lacks evidence to demonstrate that the proffered position requires a bachelor's degree level of knowledge in a specific specialty. That is, the record does not adequately communicate (1) the actual day-to-day work that the Beneficiary will perform; (2) the complexity, uniqueness, or specialization of the tasks; and (3) the correlation between that work and a need for a particular level of education and knowledge.

The record contains insufficient evidence regarding the proffered position; therefore, we are unable to determine the substantive nature of the Beneficiary's work as it will be performed for the end-client. Consequently, we are unable to evaluate whether 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 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.⁴ 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.

⁴ 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.

ORDER: The appeal is dismissed.