U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8913967

Date: JULY 20, 2020

Appeal of Vermont Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker

The Petitioner, a company engaged in construction staffing and referrals, seeks to temporarily employ the Beneficiary as a web 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 Petitioner did not establish that 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. ANALYSIS

Upon review of the entire record, for the reasons set out below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.[1]

The Director concluded that the Petitioner did not establish that the proffered position qualifies as a specialty occupation. In her decision, the Director thoroughly discussed the Petitioner's failure to meet any of the four regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) – (*4*). Upon consideration of the entire record, including the evidence submitted and arguments made on appeal, we adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and

[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.

evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[2] On appeal, the Petitioner states that *the Handbook* states that "most common degree is an associate's degree, but the OOH would not add the extra language that a bachelor's degree can be a normal requirement for web developers if that were not so." According to the *Handbook,* the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty. The *Handbook* states that an associate's degree in web design or a related field "is the most common requirement." It also indicates that a high school diploma is acceptable in certain settings. Furthermore, while the *Handbook's* narrative indicates that some employers prefer web designers with a bachelor's degree, the *Handbook* does not report that such bachelor's degrees are normally required. We note that an employer's *preference* for degreed workers is not the same as a *requirement* of such.

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a bachelor's degree without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. We interpret the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position.

We do not maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

On appeal, the Petitioner also provided additional job advertisements for web developer positions. However, upon review of the documents, we find that the Petitioner's reliance on the job announcements is misplaced. The Petitioner provided a brief explanation for each job posting as to

[2] All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site http://www.bls.gov/ooh/. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

how the companies are similar to the Petitioner. However, although the Petitioner states that the advertising companies are working with similar systems and platforms, it did not provide sufficient evidence of the similarities of the companies.

Further, the Form I-129 stated that the Petitioner employs one individual. However, the Petitioner submitted an organizational chart that indicated six employees. The Petitioner did not explain this discrepancy.

II. CONCLUSION

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 here, and the petition will remain denied.

ORDER: The appeal is dismissed.