



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

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

In Re: 21539321

Date: AUG. 2, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a “salesforce software 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 Nebraska Service Center denied the petition, concluding that the record does not establish that the Beneficiary is qualified to perform the duties of the proffered position. She did not discuss the issue of whether the proffered position is 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 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 withdraw the Director’s decision and remand the matter for entry of a new decision.

We conclude that a remand is warranted in this case for two separate reasons. First, the Director’s decision is insufficient for review. The Director is required to follow long-standing legal precedent and determine first, whether the proffered position qualifies for classification as a specialty occupation, and only if the position qualifies as a specialty occupation, should the Director then determine whether the Beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The facts of a beneficiary’s background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].”).

The Director’s decision does not indicate whether she considered the specialty-occupation issue or not. However, and as indicated, analysis of the Beneficiary’s qualifications is premature unless it first has been determined that the proffered position is, in fact, a specialty occupation. And while we acknowledge that positions located within the “Software Developers, Quality Assurance Analysts, and

Testers” occupational category generally qualify for classification as specialty occupation positions,<sup>1</sup> each petition is adjudicated on its own merits, and it is not readily apparent from the record as currently constituted that the proffered position proffered is actually such a position.

Because the record includes only a broad overview of the proffered position’s duties, the Director may wish to review whether the Petitioner has met its burden of establishing that the proffered position is a specialty occupation as defined by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “specialty occupation”). For instance, most of the job description refers to the technology tools with, and environments in, the Beneficiary would work as opposed to providing detailed information regarding the actual tasks the Beneficiary will perform.<sup>2</sup> Nor do the Petitioner’s statements on appeal provide meaningful insight into the position’s actual duties. Instead, the Petitioner highlights the Beneficiary’s various computer certifications (Microsoft Certified Professional; Sun Certified System Administrator for Solaris 10 OS; Oracle Cloud Infrastructure, Certified Architect Associate certifications; and Microsoft Azure Solution Architect certifications) to highlight his qualifications for the position. The Petitioner also highlights six courses (structured systems analysis and design; operations management; eCommerce; management of information systems; database management system; project report; and enterprise resource planning) that the Beneficiary has taken, which the Petitioner argues qualify him for the position.

Our concern is that there are technology positions whose duties may be performed with a general degree (either at the bachelor or associate’s level) and certifications, or even with undefined experience in a particular program or third-party software. There are also technology positions whose duties may require special skills, specific certifications, advanced knowledge, or that incorporate the duties of more than one occupation. In each of those cases, a position may not qualify as a specialty occupation and, given the limited information we have been given here, we question whether the petition before us might involve such a position.

We acknowledge the record’s suggestion that an individual in this position must have familiarity with several third-party technology tools, software, and programming languages. What is left unresolved, however, is whether, in addition to those requirements, the position requires a bachelor’s degree in a specific specialty, or the equivalent. If it does not, then the position is not a specialty occupation.

We will therefore remand this matter so that the Director may determine whether the proffered position is a specialty occupation. As the Director considers the specialty-occupation issue, she may wish to consider whether the Beneficiary has established the substantive nature of the proffered position. And in doing so, she may request additional evidence on the matter, if she deems it appropriate.

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<sup>1</sup> See generally Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Software Developers, Quality Assurance Analysts, and Testers, <https://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm#tab-4> (last visited Aug. 2, 2022) (positions located within this occupational category typically need a bachelor’s degree in computer and information technology or a related field).

<sup>2</sup> For example, the Petitioner describes that 35% of the duties require the Beneficiary to “Build[] functionalities in a sandbox with Visualforce to APEX.” On appeal, the Petitioner argues that this particular duty requires certification as an “Azure Solutions Architect” and certification in “Oracle Cloud Infrastructure” as an “Architect Associate.” Another duty, which accounts for 25% of the position’s time is to “Design new Salesforce solutions . . . and understand APEX, Triggers, Visualforce, SOQL, JavaScript, CSS, HTML, SSQ, use of AppExchange projects.” Here, the Petitioner cites to just three courses that the Beneficiary has taken to qualify him to perform this duty, and otherwise relies heavily on the Beneficiary’s work experience to argue he qualifies to perform this duty.

As discussed, we are also remanding this matter for a second reason. Specifically, the Petitioner has submitted new evidence on appeal that is material to the issue of whether the Beneficiary is qualified to perform the position's duties. Since the Director did not have the opportunity to review that evidence as she evaluated the Beneficiary's qualifications, a remand is appropriate so that she may consider it in the first instance. In other words, if the Director determines that the proffered position is a specialty occupation, she should conduct a new analysis of the Beneficiary's qualifications to perform its duties that takes into account this newly-submitted evidence.

Accordingly, the matter will be remanded to the Director for the above stated reasons, and for entry of a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. We express no opinion regarding the ultimate resolution of this case on remand.

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