



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

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

In Re: 20629152

Date: AUG. 17, 2022

Appeal of California Service Center Decision

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

The Petitioner, a start-up business engaged in food delivery service, seeks to temporarily employ the Beneficiary as an operations manager 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 that the proffered position is a specialty occupation. On appeal, the Petitioner submits a brief and asserts that the Director erred by denying the petition. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit 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. 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)(1) of the Act, 8 U.S.C. § 1184(i)(1), 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)(1) 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 proffered position must meet one of four criteria to qualify as a specialty occupation position.<sup>1</sup> Lastly,

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<sup>1</sup> 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

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 be employed in a specialty occupation, we look to the record to ascertain the services the Beneficiary will perform and whether such services 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. Without sufficient evidence regarding the duties the Beneficiary will perform, we are unable to determine whether the Beneficiary will be employed in an occupation that meets the statutory and regulatory definitions of a specialty occupation and a position that also satisfies at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The services the Beneficiary will perform in the position determine: (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; (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. 8 C.F.R. § 214.2(h)(4)(iii)(A).

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act. 8 C.F.R. § 214.2(h)(4)(i)(B)(2). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

## II. ANALYSIS

The Petitioner indicated that the Beneficiary will be employed as an operations manager. In the support letter, the Petitioner stated that it was established in 2020 and it “provides a new food delivery model for its customers,” by working with merchants who complete one long distance delivery to a designated location and customers can choose to pick up or request delivery.

On the labor condition application (LCA)<sup>2</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Logisticians” corresponding to the standard occupational classification code (SOC) 13-1081 from the Occupational Information Network (O\*NET), at a wage level II rate. According to O\*NET’s description, positions located within the “Logisticians” occupation primarily “[a]nalyze and coordinate the ongoing logistical functions of a

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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”).

<sup>2</sup> A petitioner submits the LCA to the U.S. Department of Labor (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).

firm or organization. Responsible for the entire life cycle of a product, including acquisition, distribution, internal allocation, delivery, and final disposal of resources.”<sup>3</sup>

In the support letter, the Petitioner described the duties and responsibilities of the proffered position as follows:

1. Analyze and monitor company’s operations strategy and use statistical analysis and predictive modeling techniques to suggest ways for management to cut down operating costs for food delivery business;
2. Collaborate with third-party vendors and internal operations team to solve multi-task logistics planning issues such as consolidation, shipment delays, and customized requests; and,
3. Manage key performance metrics including customers [sic] satisfaction metrics to drive clear assessment of operations quality and efficiency.

According to the Petitioner, the proffered position requires at least a master’s degree in business administration or related field.

We find that the Petitioner did not sufficiently describe the duties of the proffered position such that we may discern the nature of the position and whether the position 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.

The Petitioner submitted duties of the proffered position that are overarching and abstract. The provided duties lack sufficient explanation of specific tasks, methodologies, or knowledge that would be required. On appeal, the Petitioner indicated that the Beneficiary would spend 60 percent of her time to “[a]nalyze and monitor company’s operations strategy and use statistical analysis and predictive modeling techniques to suggest ways for management to cut down operating costs for food delivery business.” On appeal, the Petitioner further explained that the Beneficiary will utilize statistical regression analysis on data to develop methods to reduce costs and improve efficiency. The Petitioner states that the Beneficiary must gather information and data; however, it does not elaborate on the methods and the techniques the Beneficiary will utilize in gathering such data and does not explain why the knowledge and skills necessary to perform these tasks should be equivalent to a bachelor's degree or higher in a specific specialty.

In addition, the Petitioner states that the Beneficiary will spend 30 percent of her time collaborating with third-party vendors and internal operations to solve logistics planning issues, but the Petitioner did not provide sufficient evidence about the third-party vendors and the business processes between the Petitioner and the vendors. Further, the Petitioner did not explain the organizational structure to understand how the Beneficiary will work with internal operations.

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<sup>3</sup> O\*NET OnLine Archives, “Summary Report for: 13-1081.00 - Logisticians,” <https://www.onetonline.org/link/summary/13-1081.00> (last visited Aug. 11, 2022).

On appeal, the Petitioner also states that the Beneficiary will spend 20 percent of her time monitoring customer feedback of the company application to resolve problems, but the Petitioner does not provide sufficient explanation of the systems, methodologies or tools that will be utilized by the Beneficiary to perform these tasks or explain how the Beneficiary would use the methods and tools to perform her job duties, and the frequency of use.

The Petitioner has not established the complexity of the job duties, the amount of supervision required, and the level of judgment and understanding required to perform the duties. Furthermore, the phrases could cover a range of issues, and without additional information, do not provide any insights into the Beneficiary's day-to-day work. These generalized tasks do not provide sufficient detail to determine if the position requires any specialized knowledge and whether this knowledge would require at least a bachelor's in a specialized field. In sum, without a detailed job description, the record does not demonstrate the actual work the Beneficiary will perform; the complexity and uniqueness of the position and the duties; or that the proffered position requires at least a bachelor's degree in a specific specialty. With these ambiguities in the record regarding the duties of the position, we cannot ascertain the substantive nature of the position.

The Petitioner has not established the substantive nature of the Beneficiary's work. Consequently, this precludes a conclusion that 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 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; (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.

### III. CONCLUSION

As set forth above, we conclude that the evidence of record does not establish, more likely than not, that the proffered position qualifies for classification as a specialty occupation. Accordingly, 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.

**ORDER:** The appeal is dismissed.