



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

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

In Re: 24059238

Date: DEC. 22, 2022

Appeal of California Service Center Decision

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

The Petitioner seeks to employ the Beneficiary 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 California Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker (petition), concluding that the Petitioner did not establish that the Beneficiary's education credentials were adequate to meet the position's requirements. 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*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we conclude that a remand is warranted in this case.

I. LEGAL FRAMEWORK

The statutory and regulatory framework that we must apply in our consideration of the evidence of the Beneficiary's qualification to serve in a specialty occupation follows below.

Section 214(i)(1)(B) mandates that a specialty occupation requires "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."¹ Furthermore, section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an individual applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or

¹ We generally acknowledge that the core essence of this provision is the knowledge one attains in a specialty area, rather than a title various institutions might assign to a particular degree.

- (C)(i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that a beneficiary must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the Petitioner must satisfy at least one of the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D), which states:

Equivalence to completion of a college degree. For purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSIS);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience

II. ANALYSIS

On the petition, the Petitioner stated that the Beneficiary will serve as an “associate manager” and the position requires a bachelor’s degree, or the equivalent, in information management or a related field. Accompanying the petition, the Petitioner submitted a January 2022 Evaluation Report of Academic Records from [REDACTED] the director of [REDACTED]. The evaluation equated the Beneficiary’s four-year Indian Bachelor of Technology in computer engineering to a U.S. bachelor’s degree in computer engineering.

The Director issued a request for evidence and in response, the Petitioner submitted a second evaluation, this time from [REDACTED], a professor at [REDACTED] University. The professor bifurcated his evaluation into two segments. The first segment solely evaluated the Beneficiary’s education credentials, and the second combined his education with his other training and work experience. The professor equated the Beneficiary’s foreign degree to a U.S. Bachelor of Science in Computer Engineering. When the professor combined the Beneficiary’s training and experience into the scenario, he opined that it was equivalent to a U.S. Bachelor of Science in Management Information Systems.

Although the Director explained shortcomings within Professor Benjamin’s evaluation, they committed an error when analyzing the experience letters the professor discussed. Reviewing the Director’s decision, it appears that they conflated the regulatory requirements for two methods of evaluating the Beneficiary’s qualifications. The method the Petitioner requested was via a credentials evaluation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), (D)(1).

We recap the Director’s analysis for clarity. The Director first concluded that the Beneficiary did not possess sufficient college-level studies, which meant he would require 12 years of qualifying experience that also fulfills the criteria outlined in the regulations as to progressively responsible work experience and other requirements. The Director then stated the following:

The evidence does not clearly demonstrate that the beneficiary’s work experience fulfills the criteria outlined in the regulations as to progressively responsible work experience, that the beneficiary’s training and/or work experience includes the

theoretical and practical application of specialized knowledge required by the specialty occupation; and that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

We note that aside from the progressively responsible experience element, the remainder of these requirements are only found under a U.S. Citizenship and Immigration Services (USCIS) determination and not under a credentials evaluation method, and the Petitioner only asserted that they qualified under the credentials evaluation method found at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). Here, the Director applied requirements only found under a USCIS determination to [REDACTED] evaluation.

The Director should reevaluate [REDACTED] letter and if they continue to find it inadequate to meet the regulatory requirements, they should consider the evaluation the Petitioner presents from [REDACTED] a professor at [REDACTED] University.

In evaluating the Beneficiary's qualifications, the Director should be mindful that the Petitioner stated the position required someone with a bachelor's degree in information management *or in a related field*. As a result, the possibility exists for the Beneficiary's foreign degree to be sufficiently related to the duties. However, the Director did not instruct the Petitioner to explain what the organization would consider as sufficiently related and why. We cannot intuit the breadth of the disciplines the Petitioner would, or would not, consider to be sufficiently related.

The Director should have the Petitioner not only demonstrate the foreign degree's equivalency, but if that equivalent is not sufficiently similar to the required degree, the petitioning organization should also explain how and why the equivalency is adequately related to the required degree.

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