



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

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

In Re: 22569411

Date: OCT. 17, 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, concluding that the evidence of record does not demonstrate that the Beneficiary is qualified to perform services in a specialty occupation. On appeal, the Petitioner asserts that the Director erred when determining that the Beneficiary is not qualified to perform the services of its software developer position. 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).

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. Specifically, the Director is required to follow long-standing legal standards and determine first, whether the proffered position qualifies for classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was 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]."). Accordingly, the matter will be remanded to the Director for further review of the record and a new decision.

## I. 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).

## II. ANALYSIS

On the labor condition application (LCA)<sup>1</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Software Developers, Applications” corresponding to the standard occupational classification code (SOC) 15-1132 from the Occupational Information Network (O\*NET), at a wage level I rate.

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 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.

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<sup>1</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).

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. For example, the duties to “establish monitoring of data transfers,” “validate the programmed analysis datasets, tables, listing and figures;” “study management reports;” and “prepare clinical and statistical summary reports” do not describe the type of software solutions, knowledge, and skills the Beneficiary would need to perform these duties. Although the Petitioner stated that the Beneficiary will work with SAS, it did not provide sufficient explanation of how he would use this system and any other operations systems, languages, or tools to perform his 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 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. A detailed job description should 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.

Further, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Here, the Petitioner indicated the minimum education required for the proffered position is a bachelor’s degree “directly related to the specific field of endeavor.” The Petitioner did not provide a specific course of study for the proffered position.

The Director should further review the record to determine whether it contains sufficient evidence to establish the substantive nature of the position, because, as previously stated, the substantive nature of the work 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. *See* 8 C.F.R. § 214.2(h)(4)(iii)(A).

### III. CONCLUSION

As the Petitioner was not previously accorded the opportunity to address the above, we will remand the record for further review of these issues. If the Director determines it is necessary, they may request any additional evidence considered pertinent to the new determination.

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